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RECORD OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1924

No. 343

DEERE, MEYER & COMPANY, LIMITED, APPELLANT,

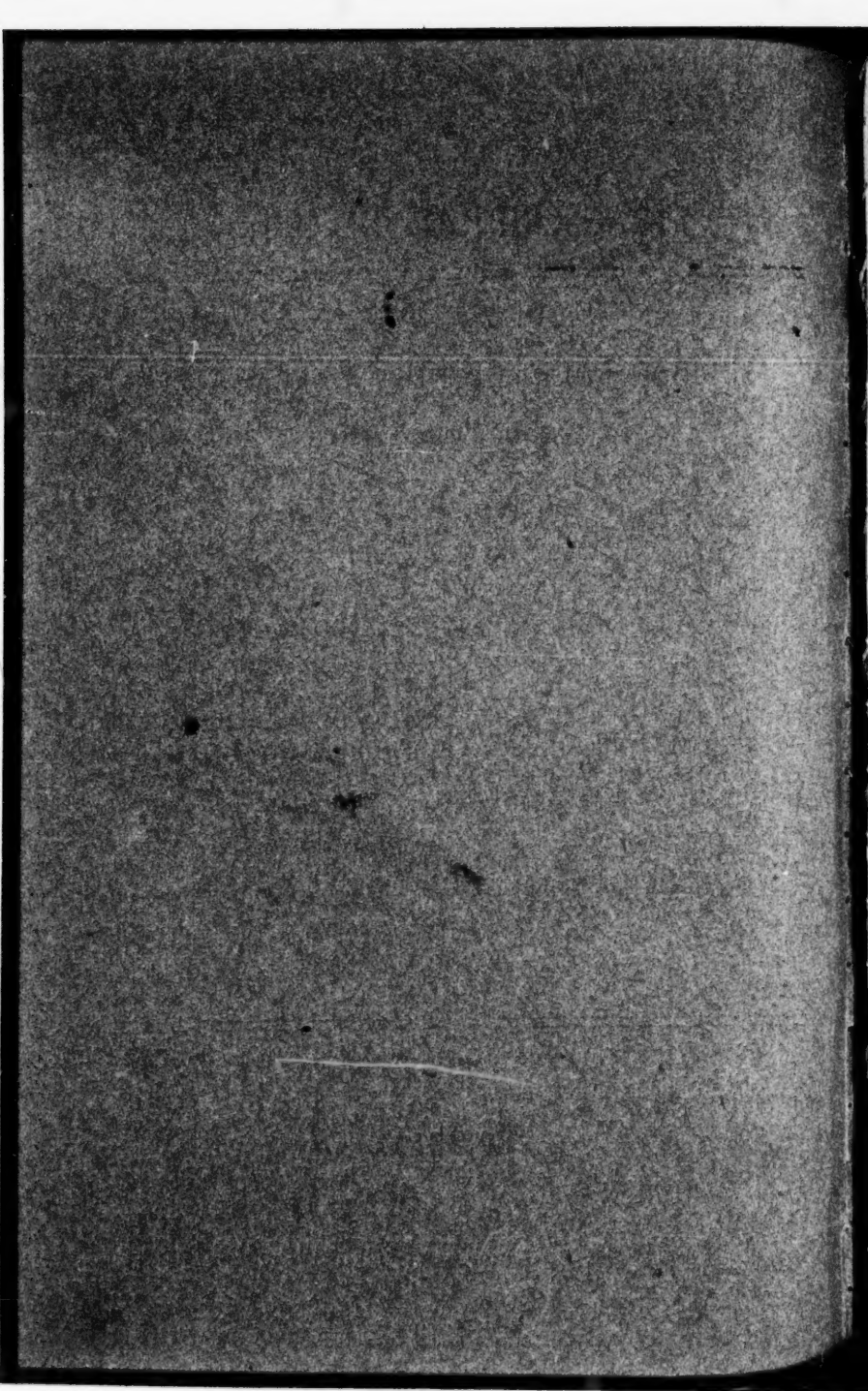
THOMAS W. MILLER, AS ALIEN PROPERTY CUSTODIAN
OF THE UNITED STATES, AND FRANK WHITE, AS
TREASURER OF THE UNITED STATES

APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF
COLUMBIA

FILED MARCH 2, 1925

(20,331)

Wm. M.
William C. Miller 7



(30,231)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1923

No. 921

BEHN, MEYER & COMPANY, LIMITED, APPELLANT,

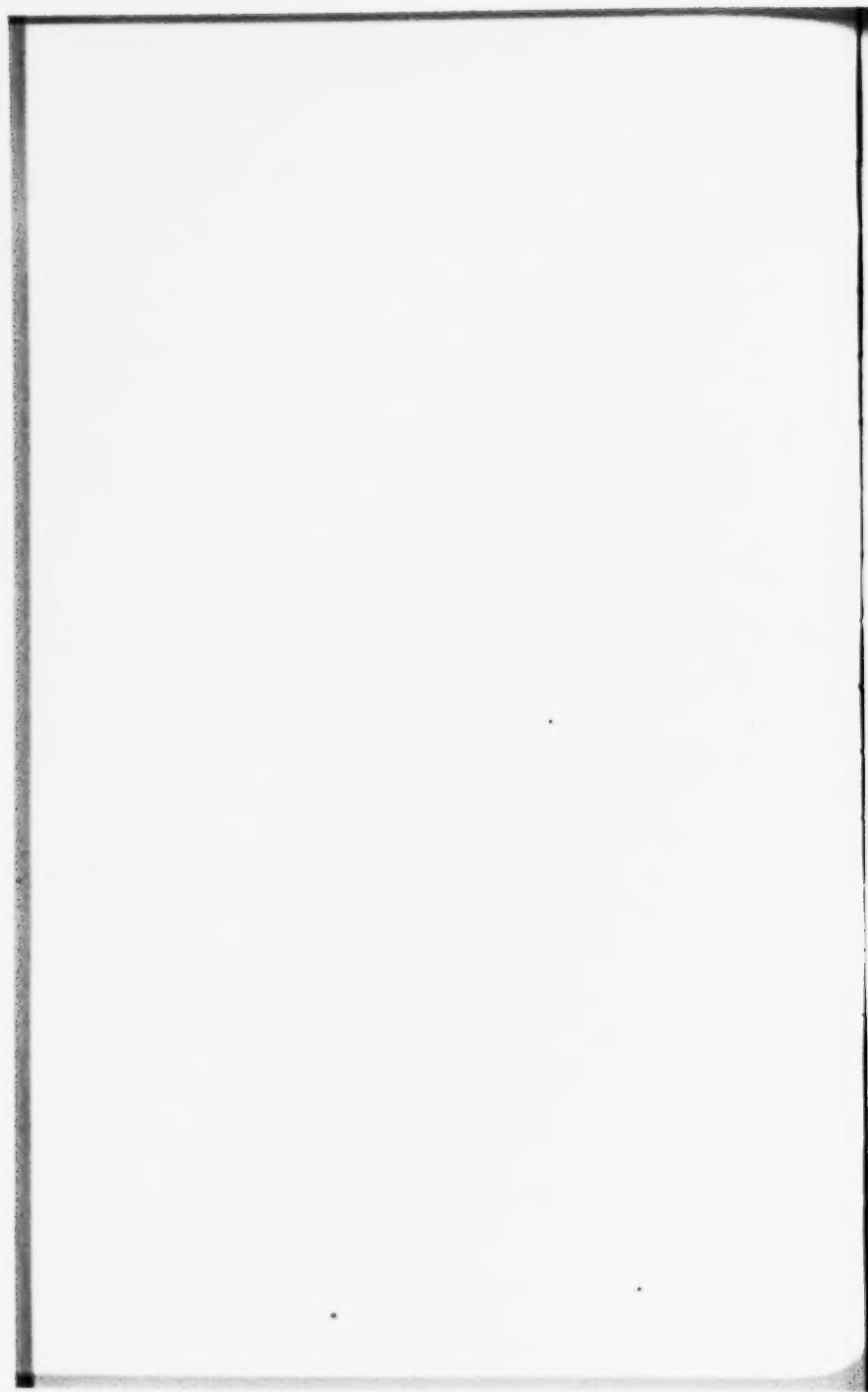
vs.

THOMAS W. MILLER, AS ALIEN PROPERTY CUSTODIAN
OF THE UNITED STATES, AND FRANK WHITE, AS
TREASURER OF THE UNITED STATES

APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF
COLUMBIA

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[fol. 1] **COURT OF APPEALS OF THE DISTRICT OF
COLUMBIA**

[Title omitted]

SUPREME COURT OF THE DISTRICT OF COLUMBIA

BEHN, MEYER & COMPANY, LIMITED, Plaintiff,

vs.

THOMAS W. MILLER, as Alien Property Custodian of the United States, and Frank White, as Treasurer of the United States, Defendants.

[Caption omitted]

[Title omitted]

BILL OF COMPLAINT—Filed July 28, 1922

To the Supreme Court of the District of Columbia:

The plaintiff, Behn, Meyer & Company, Limited, respectfully represents that:

[fol. 2] I. Since December, 1905, the plaintiff has been and at all times hereinafter mentioned was a corporation incorporated and organized in and existing under the laws of the Straits Settlements, a crown colony of the United Kingdom of Great Britain and Ireland.

II. The defendant Thomas W. Miller is a resident of the District of Columbia and is now and since in or about March, 1921, has been the duly appointed, qualified and acting Alien Property Custodian of the United States and is sued herein as the incumbent of said office. The said defendant is the successor in said office of one Francis P. Garvan, who in turn was the successor in said office of one A. Mitchell Palmer, the first incumbent of said office, and said defendant as such officer is possessed of the rights, property and interest owned or held by, and subject to the obligations, duties and liabilities imposed upon, his said predecessors in said office.

III. The defendant Frank White is a resident of the District of Columbia and is now and since in or about April, 1921, has been the duly appointed, qualified and acting Treasurer of the United States and is sued herein as the incumbent of said office.

IV. This is a suit of a civil nature brought under the laws of the United States, namely, the act of Congress known as the Trading with the Enemy Act, approved by the President October 6, 1917, and the acts amendatory thereto, and the executive orders and actions proclaimed and done in alleged conformity therewith, and also under and in conformity with the general jurisdiction and powers of this Court; and at the date of the commencement thereof eighteen months

had not elapsed after the "end of the war" as prescribed and defined in said acts of Congress.

V. The plaintiff is not now and never has been an "enemy" or "ally of enemy" as defined in said acts of Congress, and it has never been proclaimed by the President as included within said terms or either of them. It is not and never has been resident within, or incorporated within, or done business within any part of the territory (including that occupied by the military and naval forces) of any nation with which the United States is or at any time since April 6, 1917, was at war. It is not and never has been resident within, or incorporated within, or done business within any part of the territory (including that occupied by the military and naval forces) of any nation which now is or at any time since April 6, 1917, was an ally of any nation with which the United States now is or at any time since said date was at war.

VI. Heretofore and prior to February, 1918, the plaintiff had branches of, and was engaged in, business in the Straits Settlements, in British North Borneo, in Java, in Sumatra, in Siam, in India and in four places in the Philippine Islands, namely: Manila, Cebu, Ilo-Ilo and Zamboanga. At said branches in the Philippine Islands it then carried on a general trading and merchandising business which was under the supervision, management and control of one J. M. Menzi, a citizen of the Swiss Republic and a stockholder in the plaintiff corporation.

[fol. 3] VII. The plaintiff's business and branches in the Philippine Islands were in February, 1918, and for a considerable period prior thereto had been valuable and profitable going concerns. In said month of February, 1918, the then Alien Property Custodian of the United States, one of the predecessors of the defendant Miller herein, purporting to act under and by virtue of said act of Congress known as the Trading with the Enemy Act, caused to be seized, conveyed, transferred, assigned, delivered and paid over to him by said Menzi all the moneys, property and assets of said branches of the plaintiff's business in the Philippine Islands, and by agents and representatives said Alien Property Custodian took over and possessed himself of the same. Thereafter he, his agents and representatives, again purporting to act under the authority of said act of Congress, liquidated the said branches, caused the accounts thereof to be sold or collected and caused the property and assets thereof to be sold or otherwise disposed of, and took over the proceeds or avails thereof thus realized upon such liquidation. The exact amount so received and taken over as aforesaid by the Alien Property Custodian is unknown to the plaintiff, but it has been informed and believes that it exceeds half a million dollars. The said moneys are now in the possession, custody and control of the defendants herein, who are wrongfully withholding the same from the plaintiff and are and have been receiving the income therefrom.

VIII. The plaintiff charges that said taking over and seizure of its said property and assets of and at its said branches in the Philip-

pine Islands by, and the said conveyance, transfer, assignment, delivery and payment thereof to, the Alien Property Custodian, were illegal, wrongful and void in that the plaintiff was not an "enemy" or "ally of enemy" whose property or assets could be lawfully taken over or seized by, or conveyed, transferred, assigned, delivered or paid to, the Alien Property Custodian, within the true meaning and intent of said terms in said acts of Congress; that, on the contrary, it was a corporation incorporated within the Straits Settlements (which is territory of a nation associated with the United States in the prosecution of the recent war), and was not resident within or doing business within the territory of any nation with which the United States was at war or of any ally of such nation; that said assets and property so taken over, seized, conveyed, transferred, assigned, delivered and paid as aforesaid were owned at the time of such taking, seizure, conveyance, transfer, assignment, delivery and payment by a subject of a nation other than Germany, Austria, Hungary or Austria-Hungary, namely, by the plaintiff, a subject of the British Empire, the minority of whose capital stock was not owned, held or possessed by any citizen, subject, or resident of any enemy nation or of any ally thereof; that no due and legal determination was ever made under said Trading with the Enemy Act that the plaintiff was an enemy or ally of enemy, or that said property and assets were enemy property and assets, and that no due and lawful demand for said property and assets, as required by law, was ever made or served upon the plaintiff.

[fol. 4] IX. Heretofore and subsequent to said seizure, taking over, conveyance, transfer, assignment, delivery and payment as aforesaid of said property and assets by the Alien Property Custodian, the plaintiff, as required by section 9 of said Trading with the Enemy Act, duly filed with the Alien Property Custodian a sworn notice of its claim to said property and assets and to the proceeds and avails thereof realized by the Alien Property Custodian upon the liquidation as aforesaid of the plaintiff's Philippine branches.

X. The Straits Settlements hereinabove referred to are a part of the British Empire and territory of the United Kingdom of Great Britain and Ireland, which is a nation associated with the United States in the prosecution of the recent war, and said nation in like cases to this extends reciprocal rights to citizens of the United States.

Wherefore the plaintiff prays that a writ of subpoena issue herein directed to the said defendants, Thomas W. Miller, Alien Property Custodian, and Frank White, Treasurer of the United States, commanding them and each of them to appear herein and answer this bill of complaint, but not under oath, the answer under oath of each of them being hereby specifically waived, and that said defendants and each of them be directed (1) to deliver to plaintiff all of said property and assets seized, taken over, conveyed, transferred, assigned, delivered or paid to the then Alien Property Custodian or the defendant Alien Property Custodian or the defendant Treasurer of the United States, as aforesaid, and now in the possession, custody or

control of the above named defendants or either of them; (2) to pay over to the plaintiff the proceeds and avails of the sale or other disposition of any or all of said property and assets, together with all interest or income accrued or realized thereon; and (3) to account to the plaintiff for said property and assets, interest and income, and (4) that the plaintiff have such other and further relief as to the Court may seem just and proper.

Behn, Meyer & Company, Limited, Plaintiff, by Emil W. Martens, Attorney-in-fact. Howe, Swayze & Bradley, Solicitors for Plaintiff, Riggs Building, 1426 G Street, Washington, D. C. Walter Bruce Howe, of Counsel for Plaintiff.

Jurat showing the foregoing was duly sworn to by Emil W. Martens omitted in printing.

[fol. 5] IN SUPREME COURT OF DISTRICT OF COLUMBIA

MOTION TO DISMISS—Filed September 15, 1922

* * * * *

Now come the defendants, Thomas W. Miller, as Alien Property Custodian, and Frank White, as Treasurer of the United States, by their attorney, Peyton Gordon, Esquire, Attorney of the United States in and for the District of Columbia, separately and severally moving to dismiss the bill of complaint and as grounds for their separate and several motions the following:

(1) It appears affirmatively from the allegations of the bill of complaint that the plaintiff is a corporation incorporated within a country other than the United States, and was not entirely owned by subjects or citizens of nations, states or free cities other than Germany, or Austria, or Hungary, or Austria-Hungary, at the time the money and other property sought to be recovered in this suit was required to be conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian, or at the time when it was voluntarily delivered to him or was seized by him and is not now so owned.

(2) It does not appear from the allegations of the bill of complaint that the plaintiff herein is a corporation incorporated within a country other than the United States and entirely owned by subjects or citizens of nations, states or free cities other than Germany, Austria or Hungary or Austria-Hungary, at the time the money and other property sought to be recovered was required to be conveyed, transferred, assigned, delivered or paid to the Alien Property Custodian or at the time when it was voluntarily delivered to him, or seized by him, and is now so owned.

(3) That the plaintiff has not stated facts sufficient to entitle it to equitable relief under Section 9 of the Trading with the Enemy Act, as amended.

Peyton Gordon, Attorney of the United States in and for the District of Columbia, Attorney for Thomas W. Miller, as Alien Property Custodian, and Frank White, as Treasurer of the United States.

MEMORANDUM OPINION OF COURT—Filed March 2, 1923

* * * * *

The plaintiff is a corporation incorporated, organized and existing under the laws of the Straits Settlements, a crown colony of Great Britain, and in February, 1918, it was engaged in business in, among other places, the Philippine Islands. In that month its assets and property situated or located there were seized by the Alien Property Custodian, and to recover them or the money derived from their sale by the defendant, and for an accounting, this suit is brought.

The motion to dismiss is primarily based upon the contention that it does not appear by the bill of complaint that the plaintiff corporation "was entirely owned * * * by subjects or citizens of nations * * * other than Germany * * * and is so owned at the time of the return of its money or other property", as provided in paragraph 6 of sub-section b of Section 9 of the "Trading with the Enemy" Act of Congress as amended by the Act approved June 5, 1920.

The allegations of the bill of complaint in this connection are that the plaintiff is a subject of the British Empire, the *minority* of whose capital stock was *not* owned, held or possessed by any citizen, subject or resident of any enemy nation or of any ally thereof, and this was its status at the time of the seizure of its property by the defendant custodian.

The fair presumption from this allegation is that the majority of its stock *was* owned by citizens, subjects or residents of an enemy nation or an ally thereof. And indeed the motion to dismiss was argued, pro and con, upon the assumption that this was the case.

The crux of the controversy lies in this: The defendants insist that the plaintiff cannot recover unless it brings itself within the provisions of paragraph 6 of sub-section b of Section 9 of the Trading with the Enemy act, as amended, while the plaintiff contends that its right to bring and maintain this suit is conferred by sub-section a of said Section 9, which permits "any person not an enemy or ally of enemy" to assert such a claim as is made in this case, in this Court.

Sub-section b, with other sub-sections, was added by the amendment of June 5, 1920, which enacts "that section 9 of an act entitled 'An Act to define, regulate, and punish trading with the enemy, and for other purposes', approved October 6, 1917, as amended, be, and hereby is, amended *so as to read as follows*: (Italics Supplied.)

Without undertaking to state the reasons for the conclusion reached, the Court is of the opinion, that the Congress intended by this amendment, to deny to foreign corporations wheresoever incorporated and organized *outside* the United States, which were not *entirely* owned by persons not subjects or citizens of Germany or Austria or Austria-Hungary, the relief afforded by the Act.

[fol. 7] This being so, the motion to dismiss the bill of complaint must prevail.

March 2, 1923.

F. L. Siddons, Justice.

6
IN SUPREME COURT OF DISTRICT OF COLUMBIA

STIPULATION—Filed March 23, 1923

* * * * *

It is hereby stipulated and agreed by and between Messrs. Howe, Swayze & Bradley, attorneys for the plaintiff, and Peyton Gordon, Esquire, Attorney of the United States in and for the District of Columbia, attorney for Thomas W. Miller, as Alien Property Custodian, and Frank White, as Treasurer of the United States, that at the hearing upon the motion to dismiss the bill of complaint in this cause, counsel for the plaintiff amended the bill of complaint by inserting in paragraph numbered VIII thereof, before the words "the minority," the word "only," so that the said paragraph of the bill of complaint read as follows:

"The plaintiff charges that said taking over and seizure of its said property and assets of and at its said branches in the Philippine Islands by, and the said conveyance, transfer, assignment, delivery and payment thereof to, the Alien Property Custodian, were illegal, wrongful and void in that the plaintiff was not an 'enemy' or 'ally of enemy' whose property or assets could be lawfully taken over or seized by, or conveyed, transferred, assigned, delivered or paid to, the Alien Property Custodian, within the true meaning and intent of said terms in said acts of Congress; that, on the contrary, it was a corporation incorporated within the Straits Settlements (which is territory of a nation associated with the United States in the prosecution of the recent war), and was not resident within or doing business within the territory of any nation with which the United States was at war or of any ally of such nation; that said assets and property so taken over, seized, conveyed, transferred, assigned, delivered and paid as aforesaid were owned at the time of such taking, seizure, conveyance, transfer, assignment, delivery and payment by a subject of a nation other than Germany, Austria, Hungary or Austria-Hungary, namely, by the plaintiff, a subject of the British Empire, only the minority of whose capital stock was not owned, held or possessed by any citizen, subject or resident of any enemy nation or of any ally thereof; that no due and legal determination was ever made under said Trading with the Enemy Act that the plaintiff was an enemy or ally of enemy, or that said property and assets were enemy property and assets, and that no due and lawful demand for said property and assets, as required by law, was ever made or served upon the plaintiff."

Howe, Swayze & Bradley, Attorneys for Plaintiff. Peyton Gordon, Attorney of the United States in and for the District of Columbia, Attorney for Thomas W. Miller, as Alien Property Custodian, and Frank White, as Treasurer of the United States.

IN SUPREME COURT OF DISTRICT OF COLUMBIA

FINAL DECREE—Filed March 23, 1923

* * * * *

Upon consideration of the amended bill of complaint filed herein and the motion to dismiss the same filed on behalf of the defendants, Thomas W. Miller, as Alien Property Custodian, and Frank White, as Treasurer of the United States, after argument of counsel for all the parties, and the Court having taken time to consider and the plaintiff electing to stand upon its amended bill of complaint,

It is by the court, this 23rd day of March, 1923, adjudged, ordered and decreed that the amended bill of complaint be and the same hereby is dismissed.

F. L. Siddons, Justice Supreme Court of the District of Columbia.

NOTATION OF APPEAL

From the foregoing decree Behn, Meyer & Company, Ltd., plaintiff in this cause, in open court notes an appeal to the Court of Appeals of the District of Columbia, and the amount of the bond for costs is fixed at \$100.

F. L. Siddons, Justice.

We consent to the above as to form.

Howe, Swayze & Bradley, Attorneys for Plaintiff.

[fol. 9]

MEMORANDUM

April 4, 1923.—Bond on appeal approved and filed.

IN SUPREME COURT OF DISTRICT OF COLUMBIA

ASSIGNMENT OF ERRORS—Filed April 11, 1923

* * * * *

Comes now the plaintiff, Behn, Meyer & Company, Limited, and by its attorneys of record, Howe, Swayze & Bradley and upon its appeal to the Court of Appeals states that the Supreme Court of the District of Columbia erred as follows:

1. In sustaining defendants' Motion to Dismiss and
2. In dismissing the amended Bill of Complaint.

Howe, Swayze & Bradley, Attorneys for Plaintiff.

IN SUPREME COURT OF DISTRICT OF COLUMBIA

DESIGNATION OF RECORD—Filed April 11, 1923

* * * * *

The undersigned, attorneys of record respectively for the plaintiff and defendants, having agreed that the following parts of the record in the above entitled cause be included in the Transcript of Record on Appeal, hereby request the Clerk of the Court to include the following in said Transcript:

1. Bill of Complaint.
2. Defendants' Motion to Dismiss the Bill of Complaint.
3. Stipulation by the respective attorneys for the plaintiff and defendants as to amendment of the Bill of Complaint.
4. Opinion of Court sustaining defendants' Motion to Dismiss the Bill of Complaint.
5. Final Decree of the Court dismissing amended Bill of Complaint.
6. Memorandum: Appeal taken in open Court.
7. Memorandum: Appeal bond filed and approved.
8. Assignment of Error.
9. This Designation.

Howe, Swayze & Bradley, Attorneys for Plaintiff and Appellant. Vernon E. West, Ass't United States Attorney, Attorney for Defendants and Appellees.

[fol. 10] SUPREME COURT OF THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,

District of Columbia, ss:

CLERK'S CERTIFICATE

I, Morgan H. Beach, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 14, both inclusive, to be a true and correct transcript of the record, according to directions of counsel herein filed, copy of which is made part of this transcript, in cause No. 40361 in Equity, wherein Behn, Meyer & Company, Limited, is Plaintiff and Thomas W. Miller, as Alien Property Custodian of the United States, et al. are Defendants, as the same remains upon the files and of record in said Court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 20th day of June, 1923.

Morgan H. Beach, Clerk. (Seal Supreme Court of the District of Columbia.) E. W.

[File endorsement omitted.]

Monday, February 11th, A. D. 1924.

* * * * *

No. 4014

BEHN, MEYER & COMPANY, LIMITED, Appellant,

vs.

THOMAS W. MILLER, as Alien Property Custodian of the United States, and FRANK WHITE, as Treasurer of the United States

ARGUMENT

The argument in the above entitled cause was commenced by Mr. William D. Guthrie, attorney for the Appellant, and was continued by Mr. Dean H. Stanley, attorney for the Appellees, and was concluded by Mr. William D. Guthrie, attorney for the Appellant.

[fol. 12] IN THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

[Title omitted]

Before Smyth, Chief Justice; Robb and Van Orsdel, Associate Justices

OPINION

Mr. Justice VAN ORSDEL delivered the Opinion of the Court:

VAN ORSDEL, Associate Justice: This case is here on appeal from a decree entered in the Supreme Court of the District of Columbia, dismissing an amended bill of complaint filed by Behn, Meyer & Co., Ltd., plaintiff corporation, against the Alien Property Custodian and the Treasurer of the United States, to recover certain assets of the plaintiff, seized by the Alien Property Custodian, or the money derived from their sale and for an accounting.

It is averred in the bill of complaint that the plaintiff corporation was engaged in business in the Philippine Islands in February, 1918, when its assets were seized by the Alien Property Custodian; that it was "a subject of the British Empire, the minority of whose capital stock was not owned, held or possessed by any citizen, subject or resident of any enemy nation or of any ally thereof." From this averment it appears that the majority of the stock was enemy-owned. Indeed, it was conceded in argument that the majority of the stock was owned by German citizens.

The case arises under section 9 of the "Trading with The Enemy Act" approved October 6, 1917 (40 Stats. 411), as amended March 4, 1923 (42 Stats. 1511). Sub-section (a) of section 9, of the

amended Act is substantially a re-enactment of section 9 of the original Act. It provides for recovery by "any person not an enemy or ally of enemy claiming any interest, right, or title in any money [fol. 13] or other property which may have been conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian or seized by him hereunder and held by him or by the Treasurer of the United States."

Plaintiff contends that its case comes within the provisions of sub-section (a) of section 9. This position cannot be sustained, since, while plaintiff is in its corporate entity non-enemy, a portion of its stock is enemy-owned, and this is sufficient to prevent it from recovery in its corporate capacity under sub-section (a). The case, we think, falls within the provisions of paragraph 11, of sub-section (b), section 9, which, among other things, accords the right of recovery to "a corporation, organized or incorporated within any country other than Germany, Austria, Hungary, or Austria-Hungary, and that the control of, more than 50 per centum of interests or voting power in, any such * * * corporation, was at such time, and is at the time of the return of any money or other property, vested in citizens or subjects of nations, states, or free cities" other than the enemy countries named. The Act, in addition, broadly includes partnerships, associations, unincorporated bodies of individuals having their principal place of business within non-enemy countries.

By this amendment, it was clearly the intent of Congress to liberalize and enlarge the right of recovery. A number of the amendments to section 9 of the original Act were made by an Act of Congress approved June 5, 1920, 41 Stats. 977, in which the purpose of the amendment is expressed in the report of the committee on Interstate and Foreign Commerce of the House of Representatives (66th Congress, 2nd Session, Rep. No. 1089), as follows: "The purpose of the above Bill is to amend section 9 of the Trading with The Enemy Act so as to facilitate the return on the part of the Alien Property Custodian of money or other property conveyed, transferred, assigned, delivered, or paid to him or seized by him, under the provisions of the above Act. * * * In view of the fact that 19 months have elapsed since the signing of the Armistice and during this period an actual state of peace has existed, there [fol. 14] have been increasing demands for legislation asking for a return of property now being held by the Alien Property Custodian." The 1923 amendment is a further enlargement of the rights of claimants.

Plaintiff corporation, as stated in the brief of counsel, "insists that the fact that a majority of its stock was enemy-owned is immaterial. That fact would have given the Alien Property Custodian the right to take the stock or beneficial interest of its enemy stockholders; but it did not confer upon him the right to seize and sell or liquidate the plaintiff's business, to the detriment, not only of its German stockholders, but of its neutral and friendly stockholders as well."

We think paragraph 11, of sub-section (b), provides exactly the converse of the above proposition. It clearly forbids recovery by a corporation organized in a non-enemy country, except where more than 50 per cent of the stock is owned "by subjects or citizens of nations, states, or free cities" other than the enemy countries named therein. By this we are convinced that Congress intended to preclude a non-enemy corporation from recovering in its corporate capacity where the majority of the stock was owned by citizens of enemy countries. The way, however, was still left open for non-enemy stockholders, owning stock in such a corporation, to come in and recover their stock or the value thereof.

We think it clear, therefore, that plaintiff corporation, with more than 50 per cent of its stock owned by German citizens, is not entitled to recover.

The decree is, therefore, affirmed with costs.

[fol. 15] IN COURT OF APPEALS OF DISTRICT OF COLUMBIA

DECREE—Monday March 3rd, A. D. 1924

[Title omitted]

Appeal from the Supreme Court of the District of Columbia

This cause came on to be heard on the transcript of the record from the Supreme Court of the District of Columbia and was argued by counsel. On consideration whereof, It is now here ordered, adjudged and decreed by this Court that the decree of the said Supreme Court in this cause be and the same is hereby affirmed with costs.

Per Mr. Justice Van Orsdel, March 3, 1924.

[fol. 16] IN THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

[Title omitted]

MOTION FOR ALLOWANCE OF APPEAL—Filed March 7, 1924

To the Supreme Court of the United States:

Now comes Behn, Meyer & Company, Limited, the appellant in the above entitled cause by its attorneys and moves the Court for the allowance of an appeal to the Supreme Court of the United States to review the decree of this Court herein, and respectfully shows as follows:

1. The above entitled cause grows out of a Bill in Equity filed in the Supreme Court of the District of Columbia, and an appeal from a decree of that Court dismissing the bill on motion of the appellees.

The cause arose under the Act of Congress known as The Trading with the Enemy Act approved October 6, 1917, as amended, and involves (1) the construction of this law of the United States, (2) the constitutionality of certain portions thereof, if construed as held by this Court and the Court below, (3) the validity of the authority exercised by appellees, or either of them, under the United States in [fol. 17] seizing and withholding appellant's property or its proceeds and (4) the existence and scope of the power and duty of the Alien Property Custodian, and the Treasurer of the United States, the appellees herein, to withhold from appellant its said property or the proceeds thereof.

2. Appellant contended that under said Act of Congress, as amended, it was entitled to the return of its property or the proceeds thereof in the hands of the Alien Property Custodian or the Treasurer of the United States. Appellees denied the correctness of this contention. The Court sustained the appellees by its decree filed March 3rd, 1924.

3. The decree of this Court was final. The appellant is entitled to appeal to the Supreme Court of the United States under Section 250 of the Act of Congress entitled "An Act to Codify, Revise and Amend the Laws relating to the Judiciary" approved March 3, 1911, and more particularly under paragraphs Third, Fifth and Sixth of said Section. Under said paragraphs the right is given to appeal to the Supreme Court of the United States (1) in cases involving the application of the Constitution of the United States or the constitutionality of any law of the United States, (2) in cases in which the validity of any authority exercised under the United States, or the existence or scope of any power or duty of an officer of the United States is drawn in question, and (3) in cases in which the construction of any law of the United States is drawn in question.

[fol. 18] 4. Appellant requests that the bond required for the appeal be fixed at Three Hundred (\$300.00) Dollars to act as supersedeas.

(Signed) Howe, Swayze & Bradley, Attorneys for Appellant.

Dated: Washington, D. C., March 7th, 1924.

Service of the above motion is hereby acknowledged this 7th day of March, 1924.

(Signed) Dean Hill Stanley, Attorney for Appellees.

[fol. 19] IN THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

[Title omitted]

ASSIGNMENTS OF ERROR—Filed March 7, 1924

The Court of Appeals of the District of Columbia having entered a decree against Behn, Meyer & Company, Limited, the appellant

in the above entitled cause, and the appellant having filed a motion for the allowance of an appeal to the Supreme Court of the United States, the appellant presents this its assignments of error, and avers as follows:

1. The Court erred in affirming the judgment, order and decree of the Supreme Court of the District of Columbia herein.

2. The Court erred in its construction of the Act of Congress known as The Trading With The Enemy Act, approved October 6th, 1917, as amended, and in denying to appellant the return of its property, or the proceeds thereof described in its bill of complaint.

3. The Court erred in holding that paragraph 6 of sub-section b of Section 9 of said Act of Congress prevented appellant from recovering the property, or the proceeds thereof, described in its bill of complaint.

[fol. 20] 4. The Court erred in holding that sub-section a of Section 9 of said Act of Congress, as amended, did not entitle appellant to recover the property, or the proceeds thereof, described in its bill of complaint.

5. The Court erred in holding that said Act of Congress, as amended, authorized the retention by the Alien Property Custodian or the Treasurer of the United States, the appellees herein, of the property of appellant, or the proceeds thereof, described in its bill of complaint.

6. The Court erred in holding that, under the Fifth Amendment to the Constitution of the United States, the Alien Property Custodian or the Treasurer of the United States, the appellees herein, could, by virtue of said Act of Congress, as amended, lawfully withhold and retain from appellant, a neutral corporation and not an enemy as defined in said Act, as amended, the property belonging to it or the proceeds thereof, which is described in its bill of complaint.

7. The Court erred in holding that the property belonging to appellant, which is described in its bill of complaint, was lawfully seized by the Alien Property Custodian.

8. The Court erred in holding that, under subsection a of Section 9 of the said Act of Congress, as amended, appellant, although a non-enemy, could not recover its property, or the proceeds thereof, described in its bill of complaint, from the appellees, because a portion of the stock of the appellant corporation was enemy owned.

[fol. 21] 9. The Court erred in construing paragraph 11 of sub-section b of Section 9 of said Act of Congress, as amended, as preventing appellant from recovering the property, or the proceeds

thereof, described in its bill of complaint, or as warranting the appellees, or either of them, in withholding the same from appellant.

Respectfully submitted, (Signed) Howe, Swayze & Bradley,
Attorneys for Appellant.

Dated: Washington, D. C., March 7th, 1924.

[fol. 22] [File endorsement omitted.]

[fol. 23] IN COURT OF APPEALS OF DISTRICT OF COLUMBIA.

[Title omitted]

ORDER ALLOWING APPEAL—Saturday, March 8th, A. D. 1924

On consideration of the motion for the allowance of an appeal to the Supreme Court of the United States in the above entitled cause, It is ordered by the Court that said appeal be and the same is hereby allowed, and the bond to act as supersedeas is fixed at the sum of three hundred dollars.

[fols. 24 & 25] BOND ON APPEAL FOR \$300—Approved and filed March 26, 1924; omitted in printing

[fol. 26] CITATION IN USUAL FORM SHOWING SERVICE ON PEYTON GORDON—Filed March 27, 1924; omitted in printing

[fol. 27] [File endorsement omitted.]

[fol. 28] IN THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

[Title omitted]

DESIGNATION OF RECORD ON APPEAL—Filed March 27, 1924

The Clerk in the preparation of the Transcript of Record on Appeal to the Supreme Court of the United States in the above entitled cause will please include the following namely:

- (1) Transcript of Printed Record in this Court.
- (2) Minute entry as to argument.
- (3) Opinion of this Court.

- (4) Decree of this Court.
- (5) Motion for appeal to the Supreme Court of the United States and Assignments of Error.
- (6) Order granting Appeal and Fixing Amount of Bond.
- (7) Bond with approval noted.
- (8) Citation with Proof of Service.
- (9) This Designation.

Howe, Swayze & Bradley, Attorneys for Appellant.

Dated March 27th, 1924.

Service acknowledged March 27th, 1924.

(Signed) Dean Hill Stanley, Attorney for Appellees.
[fol. 29]

[fol. 30] COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

CLERK'S CERTIFICATE

I, Henry W. Hodges, Clerk of the Court of Appeals of the District of Columbia, do hereby certify that the foregoing printed and typewritten pages numbered from 1 to 29, inclusive, constitute a true copy of the transcript of record and proceedings of said Court of Appeals in the case of Behn, Meyer & Company, Limited, Appellant, vs. Thomas W. Miller, as Alien Property Custodian of the United States, and Frank White as Treasurer of the United States. No. 4014, January Term, 1924, as the same remains upon the files and records of said Court of Appeals.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court of Appeals, at the City of Washington, this 27th day of March, A. D. 1924.

Henry W. Hodges, Clerk of the Court of Appeals of the District of Columbia. (Seal of the Court of Appeals, District of Columbia.)

File No. 30,231. District of Columbia, Court of Appeals. Term No. 921. Behn, Meyer & Company, Limited, Appellant, vs. Thomas W. Miller, as Alien Property Custodian of the United States, and Frank White, as Treasurer of the United States. Filed March 28th, 1924. File No. 30,231.

OCT 30 1924

WM. R. STANBUE

CLERK

Supreme Court of the United States,

OCTOBER TERM, 1924, No. 343.

BEHN, MEYER & COMPANY, LIMITED,
Appellant,

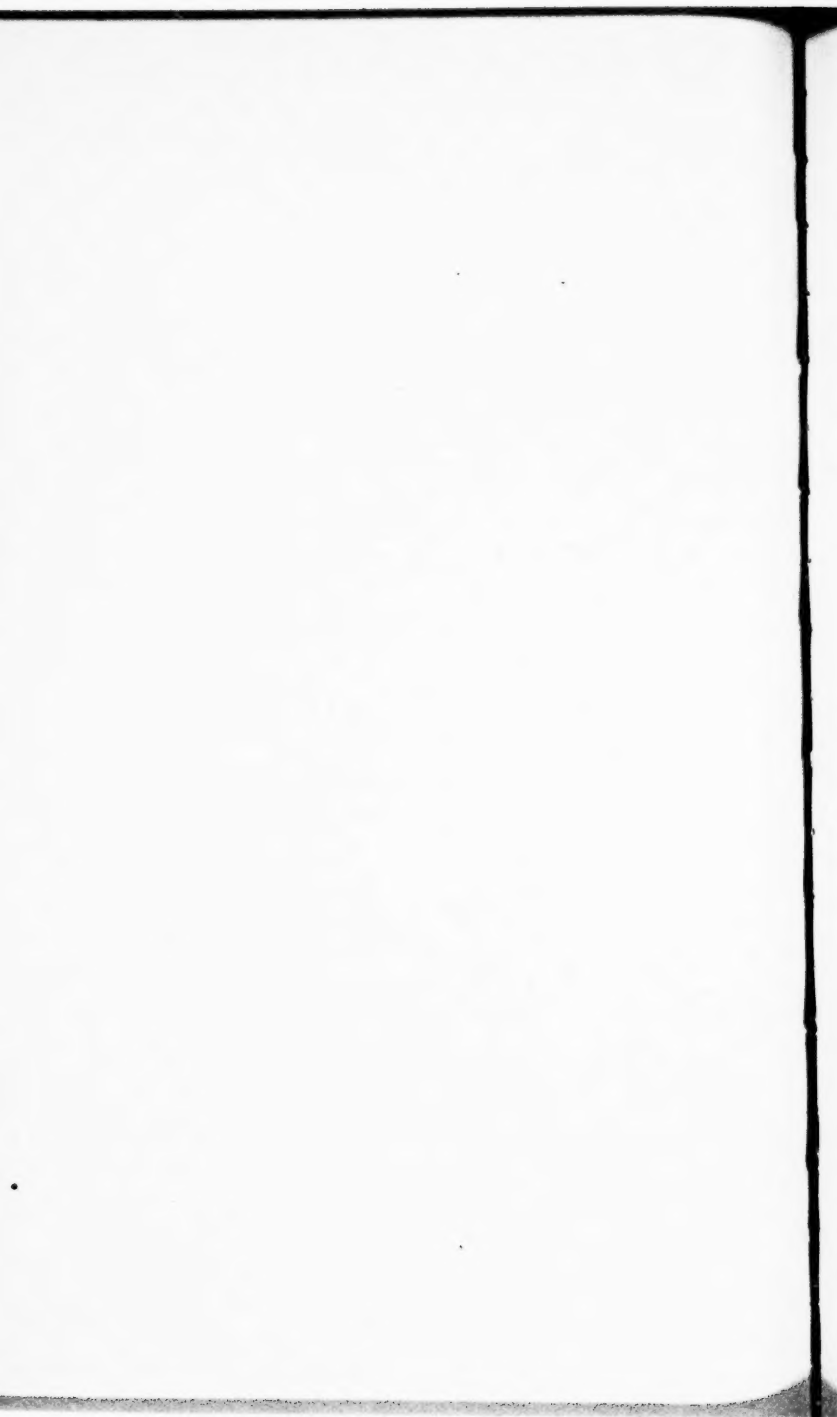
v.

THOMAS W. MILLER, as Alien Property Custodian, and
FRANK WHITE, as Treasurer of the United States,
Appellees.

APPEAL FROM THE COURT OF APPEALS OF THE
DISTRICT OF COLUMBIA.

BRIEF ON BEHALF OF THE APPELLANT.

WILLIAM D. GUTHRIE,
ISIDOR J. KRESEL,
BERNARD HERSHKOPF,
Of Counsel for the Appellant.



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Supreme Court of the United States

OCTOBER TERM, 1924, No. 343

BEHN, MEYER & COMPANY, LIMITED,
Appellant,

v.

THOMAS W. MILLER, as Alien Property Custodian, and
FRANK WHITE, as Treasurer of the United States,
Appellees.

APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF
COLUMBIA

BRIEF ON BEHALF OF THE APPELLANT

This cause comes before the court upon an appeal by the plaintiff from a decree of the Court of Appeals of the District of Columbia affirming a decision of the Supreme Court of the District which dismissed the bill of complaint on motion of the defendants. The opinion of the court below is printed at pp. 9-11 of the record* and is reported in 296 Fed. 1002.

The plaintiff is a corporation organized and existing under the laws of the British Straits Settlements and

* The page references hereafter noted are to the record unless otherwise stated.

doing business in the British Asiatic possessions, the Far East and the Philippine Islands, and its bill of complaint was based upon the claim that it was "not an enemy or ally of enemy" within the meaning and intent of the Trading with the Enemy Act as amended (40 Stat. 411, 459, 460, 1020; 41 *id.* 35, 977, 1147; 42 *id.* 351, 1511), and, therefore, that it was entitled by virtue of subsection a of section 9 of the Act to sue for the wrongful seizure and liquidation of its property by the Alien Property Custodian upon the mistaken assumption that it was an "enemy" (p. 1 *et seq.*). The motion of the defendants to dismiss proceeded upon two contentions: (1) that the plaintiff, notwithstanding the fact that it was a corporation of Great Britain with neutral stockholdings and was not doing business in any enemy territory, was, nevertheless, to be deemed an enemy under the Act simply because a majority of its shares of stock (but not all) was German owned, and (2) that the plaintiff was not a corporation "entirely owned" by non-enemy subjects (p. 4).

These contentions raise important and far-reaching questions concerning the applicability and effect of the provisions of the Trading with the Enemy Act as amended.

STATEMENT.

The bill sets forth, and the motion to dismiss admits, the following facts:

The plaintiff, Behn, Meyer & Company, Limited, is and since 1905 has been a corporation organized under

the laws of the Straits Settlements, which is a British colonial possession; as such corporation, its business and residence had never been in Germany or in any other enemy or ally of enemy territory, and it traded and carried on business entirely with and in the British colonies and elsewhere in the Far East and with and in the Philippine Islands (pp. 1-2).

Among other branches, it had several establishments in the Philippine Islands, and they were in charge of its manager, J. M. Menzi, who was one of its stockholders and a Swiss citizen (p. 2). The Philippine branches were prosperous and for several years prior to the war had done a good business (p. 2). In February, 1918, the Alien Property Custodian seized these branches. Thereafter he caused them to be liquidated, and thus to all practical intents and purposes destroyed the business in the Philippine Islands. The proceeds of the liquidation are in the hands of either the Alien Property Custodian or the Treasurer of the United States, the defendants in the suit at bar (p. 2); and the plaintiff sued therefor as authorized by law (last paragraph of sec. 7-c of the Trading with the Enemy Act as amended—40 Stat. 1020; p. 3).

It is the claim of the plaintiff corporation that the determination that it was an "enemy" under the Trading with the Enemy Act, if any such determination was in fact ever made, and the consequent seizure and liquidation of its property as that of an "enemy", were unwarranted and illegal, inasmuch as it was not an "enemy" since (1) it was not incorporated within enemy

✓ territory, (2) did not reside there, and (3) did not do business there (p. 3), and hence did not in any particular fall within the statutory definition of the term "enemy" contained in section 2 of the Act.* It insists that the fact that a majority of its stock was enemy owned (p. 6) is immaterial. That fact might have given the Alien Property Custodian the right to take the stock or beneficial interest of its enemy stockholders, which he did not purport to do; but it did not confer upon him the right to seize and sell or liquidate the plaintiff's business, to the detriment, not only of its German stockholders, but of its neutral and friendly stockholders as well.

For reasons similar to those above stated, it is contended that it was not an "ally of enemy" as defined in the Act (p. 3), and it is believed that no serious contention to that effect will be made.

✓ The bill further shows that the plaintiff was never proclaimed by the President to be an "enemy" or "ally of enemy" (p. 2); that, prior to bringing suit and in due time, it filed with the Alien Property Custodian the notice of claim required by law (sec. 9, Trading with the Enemy Act; p. 4); that the suit was commenced within the statutory period (sec. 9 as amended December 21, 1921, c. 13, 42 Stat. 351; pp. 1-2), and that the Straits Settlements and Great Britain, in like cases to this, extend reciprocal rights to citizens of the United States (sec. 9-e; p. 3).

* This section is quoted in full in Point I, *infra*.

OUTLINE OF THE APPELLANT'S CONTENTIONS.

It may aid the court to have before it at the outset a brief epitome of the issues and argument. To that end will be here set forth, in the simplest terms, the essential considerations which control the disposition of the cause.

1. First and foremost stands the indisputable fact that the property of the plaintiff was unlawfully seized by the Alien Property Custodian in February, 1918. Then, as now, the Trading with the Enemy Act defined in perfectly clear and unambiguous language who was an "enemy" within the meaning of the Act and authorized seizure by the Alien Property Custodian only of property of such "enemies." Section 2 of the Act contained the legislative definition of "enemy"; and, as to corporations, it declared them "enemies" only when (1) they were organized in an enemy country, or (2) did business in enemy territory.* That definition is, as the court will remark on reading it, on its face, both exhaustive and explicit. And, beyond all possibility of question, it does not, in any respect, include the plaintiff. The latter is not a corporation of any enemy country, and it does not and never did any business within any enemy territory. The court should, therefore, bear in mind that Congress did not denominate the plaintiff an enemy, but that, nevertheless, the plaintiff was subjected to seizure of its property by the Alien Property Custodian. This seizure was plainly a wrongful and tortious act.

* This section is printed in full in Point I below.

No attempt has heretofore been made by the defendants to point to any portion of section 2 of the Act, the statutory definition of "enemy," which could by any possibility include the plaintiff and thus justify the original seizure of its property. Perusal of section 2 of the Act will readily convince the court that it is, indeed, too plain to permit of construction. Consequently, "the courts have no choice but to follow it" as it is written, "without regard to the consequences." *Commr. of Immigration v. Gottlieb*, 265 U. S. 310, 313. Notwithstanding this settled rule of law however, the defendants have in effect contended in the courts below that the plaintiff corporation must be deemed an "enemy" within the meaning of the Act, so that its property was lawfully subject to seizure in the beginning and may now be lawfully detained, solely because a majority of its stockholders were Germans. The court will, of course, at once remark that there is absolutely nothing in section 2, the statutory definition of "enemy," which even remotely suggests such an idea, and that, therefore, the defendants' contention really is that there must be written into the section, by judicial construction, a wholly new provision or exception, which Congress did not put there, namely, that a corporation of a neutral or allied state should also be deemed an "enemy" if a majority of its stockholders were enemies. This court has, however, declared that "where the legislature makes a plain provision, without making any exception, the courts of justice can make none, as it would be legislating to do so." *Maxwell v. Moore*, 22 How. 185, 191.

In the case at bar it is, moreover, unusually clear that such a construction as the defendants urge would be but

Decided by this court. Oct. 20, 1924.

the veriest judicial legislation. As is shown below, the records of Congress plainly disclose that the theory of stock control as effecting enemy character in corporations, now urged by the defendants, was considered and deliberately rejected by the draftsmen of the Act. Again, the records of Congress hereinafter referred to further reveal that, after the Trading with the Enemy Act was passed, the Alien Property Custodian expressly requested Congress to amend the Act so that, as the Custodian's counsel expressed it, "it would authorize the seizure and the ultimate disposition of the entirety of a property which was controlled by the enemy, although [the enemy] might not be the complete owner of it," and not, as the law then did, "just authorize the sale of what belonged to the enemy." But, as is shown below, Congress refused to make any such amendment. That was in June, 1918, when the war was flagrant; and even then Congress declined to enact a measure which would have empowered the Alien Property Custodian to seize and sell the property of a non-enemy corporation most of whose stock was enemy-owned. In the face of such a record, this court is, nevertheless, requested to legislate into the Act the very provision which Congress repeatedly declined to pass and put into effect.

The court below felt constrained in candor to concede that the plaintiff was not an "enemy" within the meaning and intent of the Act. It expressly admitted that the "plaintiff is in its corporate entity non-enemy" (record, p. 10; 296 Fed. at p. 1003). It purported to find, however, a barrier to recovery by the plaintiff, a non-enemy, in acts passed in 1920 and 1923, long after the cessation

✓ ✓ ✓
 of actual war, and with the purpose, as the court below properly declared, "to liberalize and enlarge the right of recovery" (*id.*). Presently those later enactments will be considered; now it should suffice simply to point out that the inevitable result of the concession of the Court of Appeals is an acknowledgment of the wholly wrongful character of the seizure of the plaintiff's property in February, 1918, when the acts of 1920 and 1923 did not exist.

Hence it is submitted that it is plain upon the face of the Act itself (1) that the plaintiff is not an "enemy" and (2) that the seizure and sale of its property by the Alien Property Custodian was illegal and void.

2. In such circumstances, it would seem only just and natural that the law should afford a remedy. And so the Act in fact did and does afford. By section 9 of the Act as it stood originally, and by subsection 9-a, as the same provision has now been renumbered,* the right to recover property wrongfully taken by the Alien Property Custodian was and is expressly accorded to one "not an enemy or ally of enemy." Here, as the court will observe upon reading the section, is a plain and explicit grant of a remedy to an aggrieved party like the plaintiff, namely, to one who is "not an enemy." The manifest applicability of the statutory language to the case at bar cannot be reasonably disputed. But in this relation, again, the defendants present to the court a contention which does violence, not only to the clear and unambiguous language of the Act, but to the indubitable intent of Congress as well.

* The pertinent portions of section 9 are quoted below in Point II and printed in the appendix hereto.

As the court will doubtless recall, immediately after the Armistice, a loud cry arose for relief from some of the severe provisions of the Trading with the Enemy Act. It was felt that, in the stress of the great struggle, much property had been seized by the Alien Property Custodian which should no longer be held by him now that actual hostilities were over. Property of Americans and of allied and neutral citizens caught in the war zone; property of American, allied and neutral women whose husbands were enemies; property of diplomats, etc., etc., had been taken by the Custodian. The necessity for the continued withholding of such and other property was clearly past. Allied and neutral countries were protesting to our State Department in many instances, and the Secretary of State found himself under grave embarrassment in the conduct of our foreign relations. Consequently, it seemed desirable that the property of those who were only technical enemies at most, should be restored. To that end, Congress passed the act of June 5, 1920 (c. 241, 41 Stat. 977).*

This enactment retained former section 9 of the Act unchanged, except by renumbering it as subsection 9-a. That is to say, the remedy theretofore accorded to one "not an enemy or ally of enemy" was preserved. That was only as reason required that it should be. No one desired to interfere with non-enemies and their property; they had been protected while the war had been raging, and there was clearly no reason for cutting off their rights now that the war was virtually at an end; they, moreover, required no new or further relief, for

* The full text of this act is given in the appendix.

section 9 adequately provided for them. As the law stood they had a right of recovery, and reenactment of the provision without alteration maintained that intact.

"Enemies," however, stood upon a totally different footing. Unless some new provision were made for them, they would continue to be remediless, for section 9 (now subsection 9-a) afforded relief only to one "not an enemy or ally of enemy." Accordingly, subsection b, a wholly new provision, was added to section 9. Subsection b included eight separately numbered paragraphs. Each of these specified a class of enemy persons to whom some measure of relief would now be accorded. Paragraph 1 permitted an ally or neutral in enemy territory to recover his property; paragraph 2 a neutral woman married to an enemy; paragraph 3 an American woman married to an enemy; paragraph 4 an enemy diplomat; paragraph 5 an interned enemy; paragraph 6 an enemy foreign partnership or corporation entirely non-enemy-owned; paragraph 7 Bulgaria and Turkey and their subdivisions, and paragraph 8 Germany and Austria, in so far as their diplomatic property was concerned. For the benefit of those classes of "enemies", the prior restrictions upon recovery were relaxed. But, as the court will observe, not one of these numbered paragraphs of the new subsection b purported to be either a new definition of the statutory term "enemy", or a new restriction upon the rights of non-enemies.

Perusal of subsection b will show that its purpose was solely to ameliorate the condition of certain classes of enemy persons and not at all to limit or repress the prior rights of non-enemies, which had in fact been left untouched all through the actual war. The briefest an-

alysis of the eight classes affected will demonstrate that fact. Thus, paragraph 1 dealt with allies and neutrals. Of course, if they had not resided in or done business in enemy territory, they would not be "enemies" within the meaning and definition of the Act, and, therefore, would clearly have been entitled to recover their property under the Act as it stood unamended. Paragraph 1 would thus be a worthless addition to the Act, a mere redundancy, unless it did, what was its obvious purpose, namely, give relief to allies and neutrals theretofore classed as "enemies" under section 2 of the Act because either resident in or doing business in enemy territory. In his letter of May 11, 1920, to the chairman of the House Committee on Interstate and Foreign Commerce, the Attorney-General distinctly expressed this view (House Report No. 1089, 66th Cong., 2nd sess., June 2, 1920, p. 6). Hence paragraph 1 was manifestly an enactment for the relief of "enemies" as theretofore defined.

A neutral or allied woman married to an enemy was plainly an "enemy" herself under the Act. Paragraph 2, therefore, now aided her.

Likewise an American woman married to an enemy was also an "enemy". Paragraph 3 was, consequently, designed to help her.

An enemy diplomat was, of course, an "enemy". The seizure of his property, however, was inconsistent with modern and enlightened international practice and custom;* and, therefore, paragraph 4 sought to remedy that situation.

* See letter of the Secretary of State to the Attorney-General, May 5, 1920, to this effect. House Report No. 1089, June 2, 1920, 66th Congress, 2nd session, p. 5.

An interned enemy was obviously an "enemy." But after the Armistice there was no longer any sound reason for detaining his property, and so paragraph 5 permitted him to recover it back.

There was a number of allied and neutral corporations doing business in Germany. But many of those corporations were wholly non-enemy-owned. They were, therefore, only technically "enemies," and paragraph 6 was obviously intended to permit them to have back their property previously and rightfully seized by the Alien Property Custodian. And the same was true of certain German corporations wholly non-enemy-owned.

The Governments of Bulgaria and Turkey and their political subdivisions were beyond doubt "enemies" under the law. Hence, paragraph 7 was needed to relieve them.

So, also, were the Governments of Germany and Austria. But as diplomatic property of enemy nations is ordinarily respected, paragraph 8 was aimed at bringing the situation in that respect into accord with the best international usage.

It is submitted that it must needs be manifest from an examination of the eight numbered paragraphs of subsection b of section 9 that their whole purpose and sole intent were to affect the situation of certain classes of "enemies" only to their betterment, and not in any respect to limit or condition the rights of non-enemies, who were separately covered and provided for in subsection a.

3. It is, however, the defendants' contention that a proper construction of paragraph 6 of subsection b of section 9 of the Act requires the court to hold that a

corporation, which is unquestionably not an "enemy" under the express statutory definition in section 2 of the Act, whose property was originally illegally seized by the Alien Property Custodian, which has never been expressly declared an "enemy" in any act of Congress, which is indisputably within the plain terms of subsection a of section 9 and thus entitled to recover its property thereunder, must, nevertheless, be now held an "enemy" and recovery denied to it, because it does not come within paragraph 6 in that it is not entirely non-enemy-owned. In this manner, a provision enacted in June, 1920, when we were at virtual peace, and manifestly intended for the relief of certain enemy corporations and no more, is sought to be transmuted into a restriction upon non-enemy corporations and their rights, which were left untouched during the actual conflict.

The inevitable hardship and injustice to which such an unnecessary and repressive interpretation of the amendment of June 5, 1920, would commit the court, should be clearly appreciated. It would necessarily follow from the defendants' construction that any corporation of an allied or neutral country having a *single* share of stock owned by an enemy would have to be held to be in the situation of an "enemy" and without any right to recover its property from the Alien Property Custodian. Thus, for example, if the Alien Property Custodian had seized the ships of the Cunard Line, which is a British corporation not doing business in or with enemy territory, and was one of Great Britain's most effective instruments in the winning of the World War, that outrage could not be redressed and the property

returned if it chanced that *one* share of its stock was held by a German! Under the defendants' theory, it would be immaterial that the Cunard Line was a non-enemy under the express definition of the Act, and that an express and explicit provision (section 9-a) accorded it a right of recovery as such non-enemy.

✓ The court below has, indeed, expressly accepted this preposterous outcome. In *Swiss Nat. Ins. Co. v. Miller*, 289 Fed. 571, 576, referring to this aspect of its interpretation of the amendment of June 5, 1920, the Court of Appeals admitted that—

“It is true that the provision as thus interpreted has the result of classifying a corporation as an enemy, even if only one stockholder out of many should be an enemy, and this may be said to be a drastic rule.”

✓ ✓ “The absurdity of the result”—particularly as it purports to be spelled out of a statute whose purpose was, as the court below expressly declared in the case at bar (296 Fed. at p. 1003; p. 10), “to liberalize and enlarge the right of recovery”—surely “is the strongest possible argument against the correctness of such a construction of the statute.” *Badaracco v. Cerf*, 53 Fed. 169, 172.

4. Such an unreasonable result is in no sense warranted by the language or purpose of the amendatory act. Every word therein can be given its full and natural meaning without working any absurdity or injustice. All that need be borne in mind is that section 9, in its subsections a and b, deals with two wholly different classes of claimants. Subsection a, on the one hand, covers the case of one “not an enemy or ally of enemy,” as it ex-

pressly declares. To such parties, it continues to accord the recovery of property wrongfully or mistakenly taken by the Alien Property Custodian. Subsection b, on the other hand, concerns itself solely with "enemies" and it authorizes relief to certain classes of them even though the original seizures by the Alien Property Custodian were in all respects lawful. The two subsections are, therefore, independent of each other, and the limitations imposed upon "enemies" in subsection b and its various paragraphs have no necessary or reasonable relation to the wholly different class of claimants regulated in subsection a. In this view the scheme of the amendatory act becomes perfectly plain: A non-enemy, whether individual or corporation, may recover property which was wrongfully or mistakenly seized. Certain classes of "enemies", whose property was rightfully seized under the Act, are now given a new right of recovery. In one of these classes of "enemies" thus benefited under subsection b are corporations either organized or doing business in enemy territory, and they may now become claimants, but only if entirely non-enemy-owned. To such "enemies", and to them only, and not to any non-enemies, is paragraph 6 of subsection b applicable. That paragraph, however, has no relevancy to subsection a nor to the aggrieved non-enemies there expressly and distinctly provided for. Such non-enemies recover under subsection a.

5. While this cause was pending in the courts below, the act of March 4, 1923 (c. 285, 42 Stat. 1511), or the so-called Winslow Law,* was passed. Its primary purpose

* The pertinent portions thereof are printed in the appendix.

was to authorize the return by the Alien Property Custodian of at least ten thousand dollars, or the equivalent thereof in property, to every "enemy", individual or corporate, and otherwise to grant relief to "enemies". The amendatory act accomplished its purpose principally by re-enacting section 9 of the Act as amended June 5, 1920, with minor alterations, and by adding to the eight classes of "enemies" theretofore provided for in the act of June 5, 1920, three new classes; that is to say, in paragraph 9 of subsection b of section 9 it was now provided that individual "enemies" could have back ten thousand dollars; in paragraph 10 the same measure of relief was accorded to partnership and corporate "enemies", and in paragraph 11 enemy partnerships and corporations which were more than fifty per cent owned by non-enemies, were authorized to recover all their property, theretofore-rightfully seized, from the Alien Property Custodian.

Applying the same method of reasoning which we have discussed above in respect of the defendants' contention as to the effect of paragraph 6 of subsection b of section 9, the learned court below held that paragraph 11 barred the plaintiff's right of recovery in the case at bar; that this clause, clearly intended only to afford relief to an additional class of "enemies" under the Act, operated, nevertheless, to limit the right of recovery by non-enemy corporations and to reduce the rights in this regard which were expressly granted to injured non-enemies under subsection a and which had been theirs from the beginning and all through the war. In other words, it

was held that a provision relating only to *enemy* corporations should be construed to apply to allied or neutral corporations not within the statutory definition of enemy.

I.

THE PLAINTIFF CORPORATION IS NOT AN "ENEMY" OR "ALLY OF ENEMY" WITHIN THE MEANING OF THE TRADING WITH THE ENEMY ACT.

A.

As to the plain language of the statute.

The statute embraces within itself a comprehensive scheme for dealing with enemies, their allies, their property, debts, etc., and to that end contains controlling and carefully framed definitions of the principal terms employed in the Act. Section 2 defines the terms "enemy" and "ally of enemy" as used in the Act as follows:

"That the word 'enemy', as used herein, shall be deemed to mean, for the purposes of such trading and of this Act—

"(a) Any individual, partnership, or other body of individuals, of any nationality, resident within the territory (including that occupied by the military and naval forces) of any nation with which the United States is at war, or resident outside the United States and doing business within such territory and any corporation incorporated within such territory of any nation with which the United States is at war or incorporated within any country other than the United States and doing business within such territory.

“(b) The government of any nation with which the United States is at war, or any political or municipal subdivision thereof, or any officer, official, agent, or agency thereof.

“(c) Such other individuals, or body or class of individuals, as may be natives, citizens, or subjects of any nation with which the United States is at war, other than citizens of the United States, wherever resident or wherever doing business, as the President, if he shall find the safety of the United States or the successful prosecution of the war shall so require, may, by proclamation, include within the term ‘enemy’.

“The words ‘ally of enemy’, as used herein, shall be deemed to mean—

“(a) Any individual, partnership, or other body of individuals, of any nationality, resident within the territory (including that occupied by the military and naval forces) of any nation which is an ally of a nation with which the United States is at war, or resident outside the United States and doing business within such territory, and any corporation incorporated within such territory of such ally nation, or incorporated within any country other than the United States and doing business within such territory.

“(b) The government of any nation which is an ally of a nation with which the United States is at war, or any political or municipal subdivision of such ally nation, or any officer, official, agent or agency thereof.

“(c) Such other individuals, or body or class of individuals, as may be natives, citizens, or subjects of any nation which is an ally of a nation with which the United States is at war, other than citizens of the United States wherever resident, or wherever doing business, as the President, if he shall find the safety of the United States or the successful prosecution of the war shall so require, may, by proclamation, include within the term ‘ally of enemy’.”

Thus the Act of Congress declares in mandatory terms that the word "enemy, as used herein, shall be deemed to mean, for the purposes . . . of this Act," what is above quoted. Manifestly, the term thus defined in the Act cannot be accorded some other or different meaning in any part of the statute without in effect overruling this express mandatory declaration of Congress, and certainly only the most compelling reasons and the clearest language and proof of a different legislative intent would warrant any other conclusion. As was well stated by Mr. Justice Brewer when a Circuit Judge in *In re Jackson*, 40 Fed. 372, 374:*

"Where a term is used and defined in the opening part of a statute, the use of that term thereafter in the statute is with the same meaning and the same definition."

Turning to the definition of the terms "enemy" and "ally of enemy," in the opening part of the Act, it must be at once apparent beyond question that the plaintiff corporation does not come within the statutory definition. It is not "resident within the territory (including that occupied by the military and naval forces) of any nation with which the United States is at war;" it is not "doing business within such territory;" it is not "incorporated within such territory," and there is not the slightest pretense that it is an enemy governmental agent or agency, or has ever been proclaimed an "enemy" by the President. These are the essential requisites to enemy status under the Act, and the plaintiff corporation possesses

* Referred to with approval in *Cook v. United States*, 138 U. S. 157, 174.

none of them. It is a corporation of the Straits Settlements. It is, therefore, of British citizenship, nationality and allegiance, to the extent that a corporation may be said to have citizenship or nationality, or to owe allegiance to a sovereign. It has or had business establishments in the Straits Settlements, British North Borneo, Java, Sumatra, Siam, India and the Philippine Islands, and in that sense may perhaps be deemed resident in those places. But it is not, and in no sense has been, resident in Germany, or Austria, or any other enemy or ally of enemy territory, and never has done any business therein (pp. 2, 3). It is, therefore, indisputable that the plaintiff corporation is an "enemy" under the explicit terms and definition of the Act.

Neither is it an "ally of enemy", as defined in the statute. It is not "resident within the territory (including that occupied by the military and naval forces) of any nation which is an ally of a nation with which the United States is at war;" it is not "doing business within such territory;" it is not "incorporated within such territory;" it has never been proclaimed an ally of any enemy by the President, and it is not any agency or instrumentality of any ally of the enemy.

In other words, it ought to be too plain to admit of reasonable difference of opinion that the plaintiff corporation cannot be denominated an "enemy" or "ally of enemy" under the Trading with the Enemy Act, as those terms are there clearly and explicitly defined.

It was necessary, therefore, for the defendants, in order to denounce the plaintiff corporation as an "enemy" whose property was subject to seizure and sale

or liquidation under the Act, to disregard the plain and unambiguous language of the statute and to urge the court to adopt some notion of so-called "public policy" or alleged legislative purpose not expressed in or apparent from the language of the Act nor warranted by its terms. Justification for thus disregarding the plain words of a statute was deemed by the defendants to arise from the fact that a majority of the plaintiff's stock was held by German stockholders. That is thought to be sufficient ground for condemning the plaintiff corporation as an "enemy" and for capturing and destroying, not merely the interests and property rights of the enemy stockholders, but the interests and property rights of the minority stockholders as well, notwithstanding the fact that they may be American, allied or neutral citizens.

If Congress had intended, for example, that a British corporation should be treated as an "enemy" under the Trading with the Enemy Act whenever a majority of its stock was held by Germans, it would undoubtedly have so provided in the statute. The whole subject was before it. One of the problems with which it had to deal was what to do about corporations of various kinds. As the definitions embraced in section 2 of the Act make plain, Congress considered corporations, both domestic and foreign, for the purpose of exhaustively classifying them as enemies or friends, and deliberately determined that only such corporations should be enemies as were incorporated in enemy territory or did business there if elsewhere incorporated. It said nothing about converting into an "enemy" a British corporation most of whose stock was in German hands. Congress must, of

course, have been aware that there probably were many such corporations doing business in the United States.

The subject had been previously dealt with in England both by statute (4 & 5 Geo. V. c. 87; 5 & 6 Geo. V. c. 105, secs. 1 and 4) and decision (*Daimler Co. Ltd. v. Continental Tyre & Rubber Co.* [1916], 2 A. C. 307), and it is beyond dispute that both the legislation of Parliament and the decisions of the British courts were before the draftsmen of the Act adopted by Congress. Congress thus knew that it had been declared in the House of Lords that a corporation was to be deemed an enemy if a majority of its stock was enemy-owned, quite regardless of the fact that it was actually incorporated and did business in enemy territory. Congress also knew that it had been enacted by Parliament that a company with one-third of its stock enemy-owned should be subject to investigation by the Board of Trade (4 & 5 Geo. V. c. 87, sec. 2), and that if it appeared to the Board of Trade that the control or management of the company had been so affected by the state of war as to make that course expedient, then the Board was authorized to have a controller appointed to take over the company's business and property (*id.*, sec. 3), or, if it saw fit, to have the company wound up (5 & 6 Geo. V. c. 105, sec. 1). It had also previously been held in France that a company incorporated there or in Brazil was not an enemy, no matter who were its shareholders (Rouen, 1st Chambre, Nov. 2, 1915, *Clunet, Jour. de droit int.*, 233, 1916; Rouen, 1st Chambre, Jan. 19, 1916, *Gaz. des trib.*, Mar. 30, 1916). The attention of Congress was in this manner sharply directed to the course which the United States should

pursue in respect of corporations with a majority of enemy stockholdings.

Coming into the World War when the United States did, after England, France, Belgium, Russia, Italy, Japan and others, it was obvious that that problem had to be dealt with in the light of the fact that the Allied and Associated Powers had already exercised their power to seize enemy-owned property. The German stockholdings in British corporations, for instance, had already been taken by the English authorities, at least in the great majority of cases (see, e. g., c. 106, 5 & 6 (Geo. V)). Such corporations could, therefore, as a practical matter, have only slight interest in the United States. It was of no practical importance for the United States to make particular provisions with respect to corporations of the Allied and Associated Powers or neutral corporations doing business in their territory. Whatever the enemy stockholdings in them might be, the powers in question, it was reasonable to presume, had already effectively dealt with them. The number of neutral corporations, that is, Dutch, Spanish, Norwegian, etc., doing business in the United States, was comparatively small, and those with a controlling German stock interest even smaller. The whole matter may well have seemed to Congress of relative unimportance. It, therefore, left such cases to be dealt with by the other provisions of the Act, namely, those which in general terms authorized the seizure by the Alien Property Custodian of every species of enemy-owned property and every right or beneficial interest of any enemy (see, e. g., see, *7c as amended*).

What Congress has thus dealt with and thus left unaffected, no executive official and no court may alter

The statutory definition of the term "enemy" may not now be enlarged beyond the scope and effect deliberately accorded thereto by Congress. *Waite v. Macy*, 246 U. S. 606, 608, affirming 224 Fed. 359, 362; *Williamson v. United States*, 207 U. S. 425, 461; *United States v. George*, 228 U. S. 14, 20; *United States v. United Verde Copper Co.*, 196 U. S. 207, 215.

The language of section 2 of the Act is clear beyond question. Its literal meaning must, therefore, be accepted. It permits of no construction by the judiciary, and for a court to alter its unambiguous terms would be, not to interpret, but to legislate. *United States v. Goldenberg*, 168 U. S. 95, 102-3; *Mackenzie v. Hare*, 239 U. S. 299, 308; *Caminetti v. United States*, 242 U. S. 470, 485; *United States v. Standard Brewery*, 251 U. S. 210, 217. As this court has repeatedly declared:

"Nothing is better settled than that, in the construction of a law, its meaning must first be sought in the language employed. If that be plain, it is the duty of the courts to enforce the law as written" (*United States v. Standard Brewery, supra*); and, again, that—

"It would transcend judicial power to insert limitations or conditions upon disputable considerations of reasons which impelled the law, or of conditions to which it might be conjectured it was addressed and intended to accommodate" (*Mackenzie v. Hare, supra*).

Read in the light of settled principles, it is submitted that the statutory definition of "enemy" contained in section 2 of the Act may not be expanded by construction, and that, as the Act nowhere stamps as an "enemy" an allied or neutral corporation a majority of whose stock is owned by Germans, the courts may not transmute such a corporation into an "enemy."

B.

As to the actual intent of Congress.

There is, moreover, conclusive proof, aside from the unambiguous language of the Act itself, that Congress deliberately refused to go behind the corporate entity and take cognizance of the personnel of the majority stockholders for the purpose of characterizing the corporation as an "enemy", and that it deliberately and advisedly made the criteria governing the subject the conditions enumerated in section 2 of the Act, and no others.

It will readily be recalled that before the enactment of the Trading with the Enemy Act in October, 1917, it had been declared in the House of Lords in the case of *Daimler Company, Ltd. v. Continental Tyre & Rubber Co.*, (1916) 2 A. C. 307, that the test of the enemy character of a British corporation doing business in England was the nature of the control thereof, and that where it appeared that the majority of the stock of such a corporation was owned by Germans, that circumstance of itself marked the company as an enemy. The opinions in that case were before the draftsman of the bill which became our Trading with the Enemy Act of October 6, 1917, and he was aware of the differences of opinion to which it had given rise and the difficulties to which it had led in England. As repeatedly stated to Congress (see, *e. g.*, Hearings before Committee on Interstate and Foreign Commerce of the House of Representatives, 65th Congress, 1st session, on H. R. 4704, p. 12), the bill proposing the Trading with the Enemy Act was the result

of the collaboration of the Department of Justice with the State, Commerce and Treasury Departments under the guidance of Mr. Assistant Attorney-General Warren, who appears to have framed the bill and who attended the hearings before and advised the committees of the Houses of Congress. At those hearings the subject here under consideration was discussed by witnesses, by legislators (*id.* p. 85 *et seq.*) and by Mr. Assistant Attorney-General Warren (see letter, *id.* pp. 96-7), and was ultimately embraced in a report of the Senate Committee (Sen. Rep. No. 113, 65th Congress, 1st session, p. 4).

An examination of the public documents above referred to establishes beyond doubt the deliberate character of the rejection by Congress of the doctrine of the *Daimler* case, or the so-called "stock control rule" it put forward, which is now urged by the defendants as the test of the enemy status of a corporation organized in a non-enemy jurisdiction and doing no business in any enemy country. The public records show that Mr. Clayton J. Heermance, a New York attorney, testified concerning the matter before the Committee on Interstate and Foreign Commerce of the House of Representatives (Hearings, p. 85 *et seq.*). He declared that he represented the fur trade; that there were in that business many corporations organized in one or the other of the United States, but whose stockholders were either in largest part or wholly Germans; that those companies did business only in the United States and had no business dealings or communication with Germany, and that, therefore, he proposed an amendment to the bill which put their non-enemy status beyond doubt. This amend-

ment Mr. Assistant Attorney-General Warren opposed as "*absolutely unnecessary and inadvisable*". On June 4, 1917, he wrote Mr. Adamson, the chairman of the House Committee, as follows (Hearings, pp. 96-7):

"The question has been presented to me whether the bill as now drafted prevents the doing of business by an American corporation which is controlled by German enemy stockholders residing in Germany. In reply to this, I desire to say that the bill does not concern itself in any way with the stock-ownership of American corporations. If the corporation is itself doing a lawful business, that business is not made unlawful by the bill simply because the stockholders of the corporation happen to be enemies within the definition of that term in the bill. In other words, it has been my express purpose in drafting this bill not to go behind the charter or corporate entity of an American corporation. Of course, if an American corporation attempts to transmit dividends to its foreign enemy stockholders, it will be doing an act which is prohibited by the bill. It is intended in this bill to avoid all the confusion and difficulties which have arisen in England by the attempt on the part of the courts to go behind the corporate charter and corporate entity. See *Continental Tyre & Rubber Co., Ltd., v. Daimler Co., Ltd.*, (1915) 1 K. B. 893; *Daimler Co., Ltd. v. Continental Tyre & Rubber Co., Ltd.*, (1916 House of Lords) 2 A. C. 307."

Thereafter Mr. Warren explained his views as follows to the sub-committee of the Committee on Commerce of the Senate (Hearings, 65th Congress, 1st session, on H. R. 4960, Part I, p. 189):

"The only other letter [which I have had] is by Mr. Clayton J. Heermance, an attorney of New York, who came up to see me at my office, and who appeared before the House Committee, and

whose testimony you will find printed there at length. His point is this: He claims that the bill as now drawn makes it unlawful for any American corporation to do business if that American corporation has German stockholders, because, he says, the corporation is thereby doing business indirectly for the benefit of an enemy, and he thinks that the bill therefore renders the business unlawful.

"I informed him that I could not in any way see the point; that we had specifically abstained in the bill from attempting to go beyond the corporate charter. If the corporation is an American corporation, then it can do business in this country. It cannot do an unlawful business any more than an individual can, but it is not an 'enemy', no matter how many German stockholders it may have, because the corporation is a corporate body, doing business for itself. When the dividends are declared it may not remit its dividends to its various stockholders; but by doing business in this country it is not doing business for the benefit of an enemy, it is doing business for the benefit of itself. . .

"In England they attempted to go behind the charter of an English corporation, and they attempted to hold that an English corporation which was controlled by German stockholders, was an enemy within the purview of their act, and they landed in inextricable confusion. I have cited a case in the House of Lords which leaves the whole subject in England in an entirely unsatisfactory condition. Here we have solved that by saying we will not go behind the corporate charter, no matter how many German stockholders there may be, and I think that is a wise policy to adopt.

"Senator Vardaman: I can not understand the advantage to be derived by this Government going behind a corporation because whatever money is made by it [the corporation], whatever profits are made in it, they are retained here until after the war.

Mr. Warren: They must be retained.

“Senator Vardaman: They must be retained, and you could not destroy that company or hamper it in any way without interfering materially with the interests of the American stockholders.

“Mr. Warren: Yes, so that the amendment which Mr. Heermance suggests and which is contained in his letter seems to be absolutely unnecessary and inadvisable.”

These views commended themselves to the Senate Committee having the bill in charge. Accordingly, they adopted them in their report to the Senate (Report No. 113, 65th Congress, 1st session), saying (p. 4):

“A corporation chartered in the United States does not come within the purview of the term ‘enemy’, even if controlled by German stockholders; but such corporation may not transmit dividends or profits out of the United States to its German stockholders and is criminally liable, just as any other citizen of the United States may be, for engaging in an act of trade with the enemy made illegal by the act” (Hearings, p. 189).

It is, of course, well-established law that the report of a legislative committee in charge of a bill is entitled to consideration when the purpose, policy, intent, meaning, or effect of the statute are in question. *Duplex Co. v. Deering*, 254 U. S. 445, 474-5; *United States v. St. Paul, M. & M. Ry. Co.*, 247 U. S. 310, 318.

C.

Further evidence of the understanding and intent of Congress.

But there is further conclusive proof that Congress purposely rejected the contention now put forward by the defendants. Not only do the letters of the drafts-

man, the hearings before the committee, and the report of the committee, clearly show that Congress declined to adopt the "stock control" theory in enacting the original Trading with the Enemy Act, but in 1918 Congress was asked to amend the Act so as specifically to embody that theory, and Congress refused to do so.

The records of Congress show that on June 4, 1918, both Mr. A. Mitchell Palmer, then the Alien Property Custodian, and Mr. Lee C. Bradley, his general counsel, appeared before the Committee on Interstate and Foreign Commerce of the House of Representatives in support of certain proposed amendments to the Trading with the Enemy Act. These were in large part embodied in the bill then before the committee (H. R. 12338, 65th Congress, 2nd session), and they, as well as other changes, were at this hearing being urged upon Congress by the Alien Property Custodian and his general counsel. The following is an excerpt from the hearing referred to (p. 36):

"The Chairman. Now what is the next [amendment of the Act which you advocate], Mr. Bradley?

"Mr. Bradley. Subsection (d), near the bottom of page 49, [which] is copied from the English act. It reads:

"(d) The Alien Property Custodian shall have power to appoint a managing agent or the district court of the United States for the district within which the property hereinafter specified or the major portion thereof may be located, upon the application of the Alien Property Custodian shall have power to appoint a receiver, who shall under such restrictions and conditions as the Alien Property Custodian or district court, respectively, may from time to time prescribe, receive, hold,

carry on, conduct, manage, liquidate, pledge, mortgage, or sell the property of any person, firm, corporation, or association *owned or controlled*, directly or indirectly, by, for, in behalf of, for the benefit of, or in the interest of an enemy or ally of enemy, or any interest of an enemy or ally of enemy in any property, firm, corporation, or association.'

"That goes much further than any other provision of the trading with the enemy act, in that it would authorize the seizure and the ultimate disposition of the entirety of a property which was controlled by the enemy, although he might not be the complete owner of it.

"Mr. DeWalt. How does that compare with the provision that you had in the amendment to the deficiency bill [i. e., the amendment of March 28, 1918]?

"Mr. Bradley. There was nothing at all in that about this. That just authorizes the sale of what belonged to the enemy."

The court will observe that in advocating the passage of the above quoted proposed amendment to the Act, the Alien Property Custodian and his counsel were urging upon Congress precisely what the defendants are now arguing for in this court. They desired and were urging that a corporation a majority of whose stock was German owned should be subject to seizure and sale as though it were an enemy, regardless of the rights and the non-enemy character of the minority stockholders. *But the significant fact is that Congress refused to enact any such amendment*, and, as the court will note, it is not now any part of the statute.

Yet the defendants' contention and the ruling below in effect are that the court, nevertheless, may read into the Act such a provision under the guise of construing

it and of discovering and enforcing the will of Congress. The courts, it is submitted, have repeatedly refused to lend themselves to any such method of administering statutes. *Carey v. Donohue*, 240 U. S. 430, 436-7; *Pennsylvania R. R. Co. v. International Coal Co.*, 230 U. S. 184, 198; *United States v. United Shoe Machinery Co.*, 264 Fed. 138, 142, 174, dismissed 254 U. S. 666; *McDonald & Johnson v. Southern Express Co.*, 134 Fed. 282, 288. In the *Carey* case (*supra*) this court said (240 U. S. at p. 437):

“We cannot but regard the action of Congress as a deliberate refusal to conform the requirements of sec. 60 to those of section 3 b and we are not at liberty to supply by construction what Congress has clearly shown its intention to omit.”

And in the *Pennsylvania R. R. Co.* case (*supra*) it declared (230 U. S. at p. 198) that:

“The fact that this provision measuring the amount of recovery by rebate was omitted from the Act, as finally reported to both Houses and passed, is not only significant, but . . . conclusive against the contention of the plaintiff.”

See also a forceful statement of the rule in *McDonald & Johnson v. Southern Express Co.*, 134 Fed. 282, 288.

D.

Practical interpretation.

The interpretation placed upon the Act by Mr. Assistant Attorney-General Warren and Congress subsequently received the approval of the Attorney-General

and of the counsel for the Alien Property Custodian. At the next session of Congress (65th Congress, 2nd session), Mr. Lee C. Bradley, general counsel to the Alien Property Custodian, appeared before the Committee on Interstate and Foreign Commerce of the House of Representatives in connection with a proposed amendment to the Trading with the Enemy Act (H. R. 12338), and stated that (Hearings, p. 24)—

“The American corporation is never an enemy. The status of the Alien Property Custodian in respect of the American corporation is that merely of a stockholder. What he does when he seizes the enemy stock is to demand representation on its board of directors.”

On July 18, 1918, the Acting Attorney-General, Mr. John W. Davis, rendered an opinion upon the subject to the Alien Property Custodian. The latter had inquired as to his right to act against an American corporation which was the owner of a patent and a majority of whose stockholders were Germans. If such a corporation were an “enemy”, he could seize all its property, including the patent; otherwise he could take only the stock interest of the German stockholders but not the patent which belonged to the corporation itself. The Acting Attorney-General distinctly ruled against this attempt to condemn such a corporation as an “enemy” and capture its corporate property, and held that—

“The meaning of the word ‘enemy’ as used in this Act is defined in section 2. That part of the definition which deals with corporations is as follows:

“‘Any corporation incorporated within such territory of any nation with which the United States is at war, or incorporated within any coun-

try other than the United States and doing business within such territory.'

"I am of the opinion that this enumeration of enemy corporations was intended to be exhaustive and that under no circumstances can an American corporation be held to be an enemy within the meaning of this Act."

The executive construction thus placed upon the Act is entitled to weight. *Logan v. Davis*, 233 U. S. 613, 627; *Kern River Co. v. United States*, 257 U. S. 138, 154.

E.

General considerations.

It cannot reasonably be doubted that Congress deliberately and upon the fullest consideration refused to treat as an "enemy", under the war legislation now in question, any American corporation doing business in the United States, even though many or all of its stockholders might be Germans. Congress was undoubtedly of the belief that with the business of such a corporation adding to our commerce and wealth, and its agents here and within our reach and power to capture, if necessary, nothing more was needed for the national protection. The situation, in respect of allied or neutral corporations doing business in the United States and not in enemy territory and having a similar constituency of stockholders, is substantially the same. In the one instance as in the other, the business is here and helps to swell our commerce and wealth, and those in control of the beneficial interests of the German stockholders are likewise within the reach and power of the United States to capture, if necessary.

It is submitted that if the character of the stock control of any corporation had appeared to Congress to be important or decisive in the case of any corporation—American, allied or neutral—Congress would not have left that important matter in doubt or the subject of uncertain inferences, but would have plainly and unequivocally so provided, and not have limited the criteria of enemy character, as it indisputably did in section 2 of the Act, solely and exclusively to (1) residence in enemy territory, (2) incorporation therein, and (3) the doing of business there. With the *Daimler* case and the British and French rules before it, with the controversy, at least in some of its aspects, sharply called to its attention, that consideration would not have been passed over in silence in the Act, if it had been intended that it should have any force and effect at all. Congress, it is submitted, left the language of the statute what it is, because it intended when the Act was originally passed, and it has steadily maintained its intention, not to make the personnel of the stockholders any test of enemy status in respect of *any* corporation whatever.

Not only is the alleged intent of Congress to convert a corporation into an "enemy" because most of its stock was owned by Germans, contradicted by the statutory definition, the legislative history and executive construction of the Act, but it is also wholly inconsistent with the other provisions of the Act and with its general plan. It is, of course, the duty of courts to adopt that construction of a statute which will harmonize and not confuse or render inconsistent, the various portions and the general scheme of a law. *United States v. Landram*, 118

U. S. 81, 85; *A. Bryant Co. v. N. Y. Steam Fitting Co.*, 235 U. S. 327, 337; *Market Co. v. Hoffman*, 101 U. S. 112, 116. It is unnecessary to point out all the portions of the Act which are in conflict with the contention that the enemy personnel of the majority stockholders is the determinative element, or indeed any criterion at all, in arriving at the true nature of a neutral or domestic corporation as an "enemy" or non-enemy within the meaning of the Act. Reference to a few of them should suffice.

Thus, subsection b of section 8 provides that—

"Any contract entered into prior to the beginning of the war between any citizen of the United States or any corporation organized within the United States, and an enemy or ally of an enemy, the terms of which provide for the delivery, during or after any war in which a present enemy or ally of enemy nation has been or is now engaged, of anything produced, mined or manufactured in the United States, may be abrogated by such citizen or corporation by serving thirty days' notice in writing upon the Alien Property Custodian of his or its election to abrogate such contract."

If, therefore, a corporation of American, neutral, or allied nationality and origin, but with a majority of its stock held by Germans, is to be deemed an "enemy", it necessarily follows that, although it be engaged in business wholly within the United States, and even although its activities might in the highest degree be beneficial to the United States and, indeed, to the Government itself, nevertheless, practically all, if not all, of its contracts for the purchase or sale of goods may be abrogated at will by the other parties thereto, notwithstanding the con-

sequences of economic dislocation which that course is reasonably certain to entail, not only to the corporation itself, but to its American employees, customers and others dependent upon it, and to business in general. It is believed that no such policy was intended by Congress to be embodied in the statute.

The fallacy of treating an American or French corporation with a German majority of stockholders as an "enemy" when its place of business is in the United States and it does not do business in any enemy country, is further evident when it is recalled that a German individual, resident and doing business here, is not deemed an "enemy" at all under the Act, and that his contracts and business are not interfered with thereby. Nevertheless, everything which can be said in favor of regarding him as not an "enemy" obtains with at least equal force in the case of such a corporation. Neither is doing business in the enemy territory; in fact, each is aiding and enhancing American commerce and business. Indeed, the German citizen may well be regarded as having more of an enemy character than any American or French corporation whose stockholders are only in part German and none of whose business or property is in Germany.

The gravity of some of the consequences of treating such a corporation as an "enemy" may be mentioned. The country in which a corporation is organized, of course, is interested therein. In the first place, such a corporation is one of its citizens, or nationals, or quasi-subjects*; in the next place, it is almost invariably a

* Moore's Digest of International Law, Vol. VI, pp. 641-6.

potential or actual source of revenue; and, finally, it may have, and frequently does have, the moneys of individual citizens of that country invested in the enterprise. For the United States to seize the property of such a corporation, wind up its business and liquidate the concern, may, therefore, quite plainly be an act inimical and prejudicial to the interests of the neutral or allied and friendly nation in question, and obviously might create a situation fraught with the possibility of serious international complications and dangers. Nothing can be clearer, it is submitted, than that Congress never could have contemplated any such outcome. Treaty obligations with friendly or allied powers would probably be jeopardized thereby, and only the clearest and most imperative language in an enactment should be sufficient to accomplish such result. *In re Chin A On*, 18 Fed. 506, 507; *United States v. Forty-three Gallons of Whiskey*, 108 U. S. 491, 496. Unnecessary difficulties in our diplomatic relations with practically every friendly nation would be consequent upon such a view. Certainly it is not reasonable to believe that the Department of State, which collaborated in the drafting of the Trading with the Enemy Act, could have had any purpose thus to involve the national interest, peace and safety, and aggravate the delicate international situation obtaining during the war.

The primary object of the Trading with the Enemy Act was to take control of enemy interests in this country. But it was not desired or intended to take or interfere with American, allied, or neutral rights and interests. *Mayer v. Garvan*, 278 Fed. 27, 35, affirming 270

Fed. 229, 239; *Simon v. Miller*, 298 Fed. 520, 524. It is manifest, however, that the seizure and liquidation of an American, allied, or neutral corporation simply because a majority of its stock was owned by Germans, would be an interference with the rights and property of citizens of the United States, or of our associated powers, or of friendly and neutral nations, as the case might be, who were in the minority in such corporation. So far as they are concerned, the interference with their business partakes of the nature of a wrongful confiscation, for it puts their venture to forced sale and compels them, in effect, to sell their interest therein against their will.

Any such interposition of governmental power is not only unjust in that sense, but is unnecessary as well. To accomplish its purpose the Government need not take the entire corporation; all it in fact requires, and all it ought of right to have or take, is the enemy interest. That it can reach by seizing the stock certificates for the shares of the Germans, or by taking over their beneficial interest in the corporation (sec. 7 of the Trading with the Enemy Act as amended November 4, 1918, c. 201, 40 Stat. 1020, 1021). If it had been intended to reach the enemy interest in such cases by condemning the entire corporation and the interests of all its stockholders regardless of their separate rights and nationalities, the amendment of 1918 above referred to would not have taken the form it did; it would have unambiguously denounced such corporations as enemies. That it would not have won the assent of Congress in that form, seems clear from the refusal of Congress to pass such an act in the summer of 1918, as we have seen. Certainly that amendment and

the prior action of Congress, make it more than ever improper to attempt, by construction, to read into the Act a proscription of all corporations doing business in our country, but which, although incorporated here or in allied or neutral countries, have a majority of their stock owned or controlled by enemies, and to arrive at such a construction in spite of the harm to innocent and friendly individuals which it inevitably involves. It is the legitimate function of construction to avoid, and not to create hardship, injustice and oppression. *Knowlton v. Moore*, 178 U. S. 41, 77; *United States v. Kirby*, 7 Wall. 482, 486; *United States v. Heth*, 3 Cranch 399, 409.

There is nothing in the suggestion that such corporations afford a means for evading the policy of the Trading with the Enemy Act. It has been suggested that money received by a Swiss corporation might be sent to Switzerland and there in part sent or distributed to Germans. The argument could not reasonably apply to a British corporation like the plaintiff. But in any event, it is clear that the Act makes criminal such conduct and otherwise abundantly provides against any such device.

In the first place, such an agreement to circumvent the Trading with the Enemy Act as the defendants have conjectured, would plainly constitute a conspiracy to defraud the United States and to commit an offense against it, and all who helped to further it in the United States would be guilty of the felony denounced in section 37 of the Federal Criminal Code. Again, section 3 of the Act makes it unlawful and criminal for any person to trade or attempt to trade with or for the benefit of an enemy, directly or indirectly; and the words "to trade" as used

in the Act are so broadly defined in section 2 as to embrace every step in the conduct of any business transaction. Section 5-a of the Act, moreover, grants the President power to stay any threatened violations of the Act.

Finally, section 7-c confers upon the Alien Property Custodian unfettered power to seize the interests of every enemy stockholder in such a corporation. Thus, that section as originally enacted provided for the seizure of "any money or other property owing or belonging to or held for, by, on account of, or on behalf of, or for the benefit of an enemy or ally of enemy," and the amendment of November 4, 1918, further emphasized and enlarged this grant of power by adding thereto the power to seize "choses in action, and rights and claims of every character and description owing or belonging to or held for, by, on account of, or on behalf of, or for the benefit of, an enemy," including all "shares of stock or other beneficial interest in *any* corporation," etc.

These provisions of the Act obviously empowered the Alien Property Custodian to seize any and every kind of interest owned, or held for, or of any benefit to, an "enemy". The methods whereby the Alien Property Custodian was to execute and carry into effect this grant of power are made clear in the Act and are well known. It was the duty of any one who had enemy rights and claims in his possession or control to report the fact and the Alien Property Custodian had only to serve upon the person who had the business, property, or interest in charge a demand that the latter turn over to the Alien Property Custodian every right, title and interest of the

enemy (sec. 7-c as amended Nov. 4, 1918). On receipt of such demand, it at once became the duty of the person so served to comply therewith (*id.*), and ample power was conferred upon the District Courts of the United States to compel such obedience and to do whatever was needful to place into the hands of the Alien Property Custodian the subject-matter of his seizure (sec. 17).

These express provisions of the Act answer the question asked by the defendants in the courts below, as to how the Alien Property Custodian could seize the interests of enemies in foreign corporations whose business and property were here. He could make such interests his own by his demand; he could compel the persons in charge of the corporate business and property to see to it that what he had thus demanded was made over to him; and, finally, he could invoke all the powers of the Federal Courts—injunction, accounting, receivership, etc.—to effectuate his demand. Under those circumstances, it is not difficult to understand why Congress, as we have seen above, refused to go further and empower the Custodian to seize also friendly, allied and neutral interests in a corporation where there happened to be enemy stockholders.

If, however, it were the fact that the machinery provided in the Act was inadequate to accomplish the seizure of an enemy's stock interest in an allied or neutral corporation doing business in the United States, that circumstance would be wholly immaterial. Such a *casus omissus* might have been intentional with Congress. The relative unimportance of the matter and the serious practical difficulties involved in making seizures in such

cases, as well as the unjust consequences to our own citizens and allies and neutrals, which are adverted to herein, might well have seemed to Congress to outweigh the slight advantage to the nation to be derived from such seizures.

Moreover, it is to be noted that a German individual citizen resident and doing business here and who is not declared to be an "enemy" by the statute, has the same potentiality for illicit evasion of the Act as have neutral corporations. He may send money to Switzerland and the recipient thereof, conniving with him, may transmit it to Germany. Nevertheless, it cannot be seriously contended that, despite the fact that the statute does not class such individuals as enemies, the courts ought none the less to hold *all* resident Germans to be enemies within the meaning of the Trading with the Enemy Act, because of the possibility that *some* of them may misbehave. Such a general condemnation of the innocent and the guilty is not to be tolerated.

But even if we assume that the Act does not furnish adequate machinery for the seizure of the interests of enemy stockholders in foreign corporations, that cannot justify a holding by the court that, therefore, all such corporations must be deemed "enemies", notwithstanding the fact that they are not organized in or doing business in any enemy country, and thus are not embraced within any of the definitions of "enemy" laid down in the Act. The statute being plain, nothing may be read into it by judicial construction. Even if the Act omit something which one may now believe it would have been desirable to include, that clearly is not a proper

ground for adding to a plain and unambiguous enactment. The rule of law in this aspect was stated by Mr. Justice Brewer in *United States v. Goldenberg*, 168 U. S. 95, 102-3, as follows:

"The primary and general rule of statutory construction is that the intent of the lawmaker is to be found in the language that he has used. He is presumed to know the meaning of words and the rules of grammar. The courts have no function of legislation and simply seek to ascertain the will of the legislator. It is true there are cases in which the letter of the statute is not deemed controlling, but the cases are few and exceptional, and only arise when there are cogent reasons for believing that the letter does not fully and accurately disclose the intent. *No mere omission, no mere failure to provide for contingencies, which it may seem wise to have specifically provided for, justify any judicial addition to the language of the statute.* In the case at bar the omission to make specific provision for the time of payment does not offend the moral sense; *Holy Trinity Church v. United States*, 143 U. S. 457; it involves no injustice, oppression or absurdity, *United States v. Kirby*, 7 Wall. 482; *McKee v. United States*, 164 U. S. 287; there is no overwhelming necessity for applying in the one clause the same limitation of time which is provided in the other. *Non constat* but that Congress believed it had sufficiently provided for payment by other legislation in reference to retaining possession until payment or security therefor; or that it failed to appreciate the advantages which counsel insists will inure to the importer in case payment does not equally with protest follow within ten days from the action of the collector; or that, appreciating fully those advantages, it was not unwilling that he should enjoy them. Certainly, there is nothing which imperatively requires the court to supply an omission in the statute, or to

Reg. Co., decided by this Court, Oct. 20, 1924.

hold that Congress must have intended to do that which it has failed to do. Under these circumstances, all that can be determined is that Congress has not specifically provided that payment shall be made within ten days as one of the conditions of challenging the action of the collector, and hence there is no warrant for enforcing any such condition."

The serious consequences to our own loyal citizens which lurk in the contentions of the defendants should also be appreciated. The Act prohibits and makes criminal trading with an enemy. But if domestic, allied and neutral corporations doing business here and not in enemy territory are to be classified as enemies whenever a majority of their stock is enemy-owned, an extremely onerous burden is laid upon business men. They must then, ascertain before they can safely do business with any corporation, not only where it is incorporated, but who in fact owns or controls a majority of the stock—a matter frequently difficult to discover. If they fail to make the inquiry, or, after making it, arrive at an erroneous result, they may be haled before a jury and compelled to defend against the serious criminal charge of trading with the enemy. It is too plain to warrant discussion that the business of the country could not be done if laid under such an oppressive burden and threat.

Nor is that the ultimate or logical end of the defendants' contention. Control of a corporation is often not with the majority of its stockholders. A compactly held, large block of stock, even though not as much as half of the total stock, is in many instances sufficient for corporate control where the rest of the stock is scattered and in many hands. Is such a corporation, even though

all of its business is done here, also to be deemed an "enemy" where the closely held minority happens to be German? Are business men to fear to deal with such an English or Swiss corporation, notwithstanding the fact that all of its dealings are in the United States? Is all the property and business of such a corporation liable to be seized by the Alien Property Custodian and disposed of at forced sale, despite the rights of the friendly or allied nation which incorporated the company and the rights of the majority who may be Americans, allies, or friendly neutrals? The unjust and impolitic consequences foreshadowed in these questions sufficiently mark the error of the theory which the defendants now advance.

For the foregoing reasons, it is submitted that the plaintiff corporation is not an "enemy" or "ally of enemy" within the meaning and intent of the Trading with the Enemy Act. Neither the express language of the Act nor the purpose of its framers makes it that. The alleged "public policy" to that end, which the defendants invoke, is not that of the statute; and it was long ago laid down that the courts can know no public policy but that contained in the Constitution and laws. *License Tax Cases*, 5 Wall. 462, 469.

In *Hadden v. The Collector*, 5 Wall. 107, 111, Mr. Justice Field said:

"What is termed the policy of the government with reference to any particular legislation is generally a very uncertain thing, upon which all sorts of opinions, each variant from the other, may be formed by different persons. It is a ground much too unstable upon which to rest the judgment of the court in the interpretation of statutes."

I I .

THE PLAINTIFF CORPORATION IS ENTITLED TO SUE AND RECOVER UNDER SUBSECTION A OF SECTION 9 OF THE TRADING WITH THE ENEMY ACT.

If, as we have seen, the plaintiff corporation is not and was not an "enemy" or "ally of enemy" within the terms of the Trading with the Enemy Act, it was plainly erroneous for the Alien Property Custodian to determine otherwise, if he ever in fact made any such determination, and it was a distinct violation of its rights when the Custodian in February, 1918, seized its business as though it were enemy-owned property and thereafter caused it to be liquidated and, for all practical purposes, destroyed (p. 2). The charges of illegal determination of enemy character, wrongful seizure and sale in paragraph VIII of the bill (pp. 2-3) are, therefore, well-founded. Reason and justice would, consequently, seem to demand that the plaintiff corporation have a remedy for this violation of its legal and property rights. But it was the defendants' contention in the courts below that the plaintiff corporation is remediless because some of its stock (*and it would not matter how little*) was owned by Germans. The warrant for that argument the defendants profess to find in section 9-b (6) of the Act, as amended June 5, 1920 (c. 241, 41 Stat. 977). The section as amended is printed in full in the appendix hereto and in part quoted below.

Before examining the statutory language which, it is claimed, accomplishes this drastic result, it may be in-

structive to appreciate and have in mind some of the consequences which the defendants' contention could entail. It will at once be recalled that when the constitutionality of the Trading with the Enemy Act was challenged in *Central Union Trust Co. v. Garvan*, 254 U. S. 554, and *Stoehr v. Wallace*, 255 U. S. 239, 245, it was upheld because the court found in section 9 of the statute adequate provision for the restoration and recovery of property which had been mistakenly seized by the Alien Property Custodian as enemy-owned. Thus, in the last mentioned case, Mr. Justice Van Devanter said (255 U. S. at p. 245):

"That Congress in time of war may authorize and provide for the seizure and sequestration through executive channels of property believed to be enemy-owned, if adequate provision be made for a return in case of mistake, is not debatable. *Central Union Trust Co. v. Garvan*, *supra*. . . . The present act commits the determination of [the question of enemy-ownership] to the President, or the representative through whom he acts, but it does not make his action final. On the contrary, it distinctly reserves to any claimant who is neither an enemy nor an ally of an enemy a right to assert and establish his claim by a suit in equity unembarrassed by the precedent executive determination. . . . Thus there is provision for the return of property mistakenly sequestered; and we have no hesitation in pronouncing it adequate, for it enables the claimant, as of right, to obtain a full hearing on his claim in a court having power to enforce it if found meritorious."

That was, indeed, the view which was urged by the Government and which prevailed in the courts from the beginning. It was so held by the Circuit Court of Ap-

scale for the Second Circuit in *Carvan v. \$20,000 Bonds*,
 265 Fed. 117, 119 (affirmed sub nomine *Central Trust*
Co. v. Carvan, 254 U. S. 554), where Circuit Judge Ward
 said:

“If persons not alien enemies, or allies of alien enemies, were given no means to protect their interests in such property the seizure would be unconstitutional as without due process of law; but they are given such remedies under section 9.”*

If, however, the defendants be right in the interpretation which they now place upon section 9 as amended, then it is apparent that at least grave doubt must arise as to the constitutionality of the amended act in such cases at that at bar. The plaintiff corporation, as we have seen, is neither an “enemy” nor “ally of enemy”, but, nevertheless, it has, the defendants assert, no right to recover back its property which was wrongfully and mistakenly seized and sequestered as enemy-owned. Yet this court has sustained the Act only because it was convinced—and that, too, on the argument of the Government itself—that the statute “distinctly reserves to any claimant who is neither an enemy nor an ally of an enemy a right to assert and establish his claim by a suit in equity unembarrassed by the precedent executive determination” of enemy ownership. The argument of the defendants in the case at bar, however, attempts absolutely to deny that right to the plaintiff, notwithstanding

* It was argued below by the defendants (brief, p. 27) that the doctrine of the foregoing decisions was limited to American citizens exclusively; in other words, that they alone were entitled to protection from the taking of property without due process of law. Of course that contention was quite frivolous. The protection of the Fifth Amendment extends to every “person” and not merely to citizens. *Wong Wing v. United States*, 163 U. S. 228, 238.

that it is not an "enemy" or "ally of enemy". If that be the necessary outcome of the amendment to the Act in 1920, if that be its proper construction, then it is submitted that it is plainly unconstitutional. The rule is well-settled, however, that it is the duty of the court to reject, if reasonably possible, a construction of a statute which would cast such a grave doubt upon its validity. *United States v. Delaware & Hudson Co.*, 213 U. S. 366, 407-8; *United States v. Bennett*, 232 U. S. 299, 303; *United States v. Jin Fuey Moy*, 241 U. S. 394, 401; *Texas v. E. Texas R. R. Co.*, 258 U. S. 204, 207; *Arkansas Gas Co. v. Railroad Comm.*, 261 U. S. 379, 383.

The defendants' interpretation leads also to unjust and impolitic results. Under it, for example, a British or French corporation whose property had been illegally and mistakenly seized as enemy-owned, would have no right to recover it if a German held even as little as a single share of its stock; and apparently, also, the same result would follow even if the Alien Property Custodian himself thereafter seized the German's share! Under this view, the enemy or non-enemy character of the corporation, as expressly defined in the Act, is, in truth, rendered utterly immaterial and all that really matters, for any practical purpose, is the fact that some enemy individual owns a share of stock therein. The contention of the defendants is equally disregardful of the rights of the friendly, neutral, or allied nation in which the company may have been incorporated, as well as of the rights of our own citizens or the nationals of neutral or allied countries who own the rest, and perhaps the great ma-

erty of the stock. The serious injuries to our own citizens and to friendly nationals in thus taking away and destroying by liquidation their business and investment, and the grave danger of involving the United States in unnecessary disputes with allied and neutral nations, must manifestly be accepted as inevitable under the defendants' construction of the amended statute.

The foregoing logical consequence of the defendants' contention entitle us to view with misgiving the construction which they urge, for it has frequently been remarked by the courts that "a bad result suggests a wrong construction." *People ex rel. Beaman v. Feitner*, 168 N. Y. 360, 366.

Prior to the amendments of June 5, 1920 (c. 241, 41 Stat. 977), and February 27, 1921 (c. 76, 41 Stat. 1147), to section 9 of the Trading with the Enemy Act (approved October 6, 1917, c. 106, 40 Stat. 411), it would have been too clear to be debatable that the plaintiff corporation, not being "an enemy or ally of enemy", would have been entitled to maintain its bill of complaint herein under section 9 of the Act. That section then provided in part as follows:

"That any person not an enemy or ally of enemy claiming any interest, right, or title in any money or other property which may have been conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian hereunder and held by him or by the Treasurer of the United States . . . may file with the said Custodian a notice of his claim under oath and in such form and containing such particulars as the said Custodian shall require; and the President, if application is made therefor by the claimant, may order

the payment, conveyance, transfer, assignment or delivery to said claimant of the money or other property so held by the Alien Property Custodian or by the Treasurer of the United States or of the interest therein to which the President shall determine said claimant is entitled. . . . If the President shall not so order within sixty days after the filing of such application or if the claimant shall have filed the notice as above required and shall have made no application to the President, said claimant may, at any time before the expiration of six ["eighteen" when this suit was filed] months after the end of the war institute a suit in equity in the Supreme Court of the District of Columbia or in the district court of the United States for the district in which such claimant resides, or, if a corporation, where it has its principal place of business (to which suit the Alien Property Custodian or the Treasurer of the United States, as the case may be, shall be made a party defendant), to establish the interest, right, title or debt so claimed," etc.*

The foregoing provisions have never been altered in any respect. They still remain as subsection a of section 9 of this Act. It is manifest, therefore, that they still recognize or confer upon the plaintiff corporation, as a "person not an enemy or ally of enemy", the right to file a claim and sue for the return of any of its property which has been mistakenly taken by the Alien Property Custodian as enemy-owned. The applicability of the plain and unambiguous provisions of this subsection of the Act cannot be reasonably denied. But the defendants' claim is that the provisions added to section 9 by amendment have, in effect, so limited and qualified the other provisions of the Act as to convert the plaintiff

* This is section 9 as amended July 11, 1919 (c. 6, 41 Stat. 35).

corporation into an "enemy", and to withdraw from the plaintiff its former right to sue for and recover property wrongfully taken from it.

The rule of satutory construction in such a case was long ago declared by this court. In *Faw v. Marsteller*, 2 Cranch 10, 23-4, Chief Justice Marshall said in respect of a similar contention as follows:

"It is admitted, in argument, by the counsel for the appellee, that the terms used in the first part of the section are such, that if they stood alone, they would include, in their letter, the case at bar: but it is contended, that there are subsequent words which limit those just quoted, so as to restrain their operation. . . . In searching for the literal construction of an act, it would seem to be generally true, that positive and explicit provisions, comprehending in terms a whole class of cases, are not to be restrained, by applying to those cases an implication drawn from subsequent words, unless that implication be very clear, necessary, and irresistible."

In the case at bar, however, the court will search the amendments to section 9 of the Act in vain for language which, by "clear, necessary and irresistible" intendment, reclassifies the plaintiff and converts it into an "enemy", or legalizes the original wrongful, if not outrageous, seizure of its property, or withdraws from the plaintiff the right theretofore existing to recover its property under the plain provisions of subsection a. All that, by any possibility, can be found in the amendment of June 5, 1920 (c. 241, 41 Stat. 977), is paragraph 6 of subsection b. Perusal of that paragraph will at once reveal to the court its obscure, inartificial and ungrammatical character; as well as the fact that it stands in subsection b in associa-

tion with seven other numbered paragraphs, each one of which plainly purports to relate—not to the rights of non-enemies, whose property was wrongfully taken, and which are comprehensively covered and regulated in subsection a—but solely to the rights of “enemies” whose property was lawfully seized. It has been said that—

“The court could not think of letting the subsequent, incoherent and obscure phraseology of [a] latter clause of [a statute] control and substantially defeat the clear and explicit language of [a preceding] clause. . . . It is only when the subsequent clause of a statute has the combined advantage of equal clearness as well as position that it will control the former. It would be a poor rule to reject what is clear in order to give effect to what is obscure” (*State v. Williams*, 8 Ind. 191, 192).

Again, the court will not fail to observe the inherent improbability which underlies the defendants’ contention. Not even the defendants have claimed that the original Act made stock ownership by one or even by a majority of enemy individuals any test of the enemy status of a corporation. Consequently, it is certainly amazing to discover that that result, if the defendants be right, came about only after the actual war was over and there had been virtual peace for nineteen months, and after Congress in actual war-time had deliberately refused to pass an amendment to that effect. It passes the bounds of reason to declare that such a corporation as the plaintiff was not an “enemy” and not remediless under the Act all through the trying days of fear and conflict, but that it first became an “enemy” and lost its right to relief for a clearly wrongful seizure only when

the war was over and under an amendment to the Act passed as remedial legislation for the return of property previously and rightfully seized from an entirely different class, namely, "enemies."

Consideration, moreover, of the reasons moving Congress to enact the amendments in question and of their terms will further emphasize the unfounded character of the defendants' assertions. The amendments of June, 1920, and February, 1921, were not intended to alter in any particular the statutory definitions of the terms "enemy" and "ally of enemy" contained in section 2. Perusal of the amendments will at once demonstrate that fact. They have no relation to those definitions and they are obviously not definitions in themselves. They were not enacted to increase or enlarge the number or classes of persons who were enemies or allies of enemies. On the contrary, the purpose of the amendments, enacted as they were long after the Armistice and during a period of virtual peace, was to alleviate some of the conditions of hardship and injustice which the original Act had brought about or which the strict war-time administration thereof had revealed. The purpose of the new provisions in subsection b was to increase, and not to diminish, the number of persons who could seek and obtain relief under the Act, by adding thereto classes of persons who had previously been regarded as enemies or allies of enemies under the Act, and not at all to withdraw the right to relief from persons theretofore entitled to file claims and sue because neither enemies nor allies of enemies. That, indeed, was repeatedly declared to Congress by the committees in charge of the amendatory

bills, by the Department of State and by the Attorney-General. Thus, in the report of June 2, 1920, to the House of Representatives by the Committee on Interstate and Foreign Commerce (66th Congress, 2nd session, Rep. 1089) it was stated in part as follows (pp. 2, 3):

"The purpose of the above bill is to amend section 9 of the trading-with-the-enemy act so as to facilitate the return on the part of the Alien Property Custodian of money or other property conveyed, transferred, assigned, delivered, or paid to him or seized by him under the provisions of the above act. . . . In view of the fact that 19 months have elapsed since the signing of the armistice and during this period an actual state of peace has existed, there have been increasing demands for legislation asking for a return of property now being held by the Alien Property Custodian. This is true as to many women who were American citizens and who had married enemy aliens prior to our declaration of war April 6, 1917, and who were possessed of property not acquired directly or indirectly from any subject or citizen of Germany or Austria-Hungary.

"Another class of claimants are interns who were taken from German merchant vessels and detained in internment camps in the United States. While most of these interns have returned to Germany about 100 of them have remained and will doubtless become citizens. The property thus taken over by the Alien Property Custodian belonging to them at the time of their internment amounted to approximately \$2,000,000.

"Another class consists of diplomatic or consular officers who were citizens or subjects of Germany or Austria or Hungary or Austria-Hungary at the time of the severance of diplomatic relations between the United States and such nations. In some instances their property was taken and is still being held by the Alien Property Custodian, notwithstanding that claims therefor have

been made through diplomatic channels. . . . The reasons for the enactment of the pending measure are clearly set forth in the accompanying communications received from the Attorney-General and the Secretary of State. For the reasons set forth in the letter of the Secretary of State prompt and favorable action is urged in order that the State Department may be relieved of some embarrassment in its dealings with some countries of Europe."

One of the letters of the Attorney-General thus referred to and annexed to the foregoing report, contains the following (*id.* pp. 3-4):

"The Secretary of State has written to me that this Government has recognized that the Provinces of Alsace and Lorraine have now become a part of France and that, in his opinion, the continued retention by the Alien Property Custodian of property of residents of these Provinces who have acquired French nationality under the Versailles treaty of peace cannot fail to have an unfavorable effect upon the relations of the United States and France. The Secretary of State expressed the view that the trading with the enemy act should be so amended as to allow the return of this property. He suggested that I recommend to Congress an amendment to this effect.

"The Secretary of State also points out that this Government has recognized the Republics of Poland and Czechoslovakia and the Kingdom of the Serbs, Croats and Slovenes, and that for this Government to retain the property of persons who are citizens of those countries and resident within their borders would have a prejudicial effect upon the relations between the countries in question and the United States. The Secretary of State's recommendation was that any amendment to the trading with the enemy act should be broad enough to authorize the return of property belonging to citizens of these countries. He also felt that the amendment should cover the cases of residents in

territory which may be allotted, under treaties yet to become effective, to an allied or associated power (as, for example, Trieste), as well as territory which, under plebiscites to be held in accordance with treaty provisions, may be allotted to a neutral country (as, for example, that portion of Schleswig which may be allotted to Denmark).

"I am herewith forwarding you a draft of a bill to amend section 9 of the trading with the enemy act, which I believe will provide the relief requested by the Secretary of State. For your convenience, I shall briefly analyze its provisions and indicate the change which it would make in existing law.

"Section 9 has been divided into subsections. *Subsection (a) is identical with the present provisions of section 9 of the trading with the enemy act. It contains the same provisions for relief of any person not an 'enemy or ally of enemy' as those terms are used in that act.*

"The first portion of subsection (b) provides for the relief of citizens of allied countries resident in territory which was occupied during the war by the armed forces of the enemy. Relief was extended to this class of persons in the amendment of section 9 contained in the general deficiency appropriation act approved July 11, 1919. The phraseology has been changed slightly to provide relief in a small number of cases which have been thought not covered by the amendment of July 11, 1919.

"Subsection (c) contains a new provision giving all those covered by subsection (b) the right to bring suit for their property in the manner provided for in subsection (a) which contains the original provisions of section 9.

"Subsections (d) and (e) contain the same general provisions relative to the effect of section 9 which were in section 9 as originally enacted."

It will at once be observed that the Attorney-General pointed out to Congress that subsection a of section 9

was identical with the pre-existing provisions of that section, and that "it contains the same provisions for relief of any person not an 'enemy or ally of enemy' as those terms are used in that act." In other words, there was no purpose or intent in his mind to re-define the statutory terms "enemy" and "ally of enemy" or to abridge the rights of any non-enemy who would have been entitled to the return of property under section 9 as it stood prior to amendment.

A subsequent letter of the Attorney-General, also annexed to the House committee's report (*id.* p. 6), contains the following:

"Subsection (b) of the proposed amendment [to section 9] provides, in substance, for the return of all *enemy* property, except that held by persons who are in fact *bona fide* subjects or citizens of Germany, Austria, or Hungary."

The court will remark that the Attorney-General in this letter clearly expressed the belief that subsection b would affect and relieve only "enemies". As he stated, its purpose was to deal solely with "enemy property". The idea that subsection b was also intended to restrict non-enemies is not even suggested in his letters to Congress; and there is every reason to presume that, if he had then held any such opinion, he would not have failed to impart that fact to Congress.

On May 5, 1920, the Secretary of State wrote the Attorney-General in part as follows in reference to the proposed amendment to section 9 of the Act (*id.* p. 5):

"The various neutral and allied States whose nationals' property has been taken over by the Alien Property Custodian by reason of their resi-

dence in enemy or ally of enemy territory, or otherwise, for some time have been pressing for the release of such property. It appears that the Department of Justice has ruled that, under the Trading with the Enemy Act in its present form, it is not in a position to release this property. During the actual conduct of hostilities it may have been advisable to retain such property. In view, however, of the cessation of hostilities, this department feels that the Government should no longer retain this property, even though a technical state of war may exist. To do so would undoubtedly create an unfavorable impression in the States concerned, and would be of no advantage to the United States in its negotiations with enemy countries."

The following extract from a letter of the Secretary of State to the chairman of the House committee in charge of the bill also throws light upon the purpose which the amendatory legislation was intended to accomplish. The letter reads in part thus (*id.* p. 7):

"The Attorney General has informed me that on May 11, 1920, he submitted to you a draft of an amendment to section 9 of the trading with the enemy act, permitting the return of property taken over by the Alien Property Custodian belonging to citizens or subjects of neutral states, and states associated with this Government in the World War, as well as to persons who have or will, in pursuance of treaty provisions, become citizens or subjects of such states, for example, Alsace-Lorraine, or citizens or subjects of new states which have been recognized by this Government, such as Poland and Czechoslovakia.

"The draft, it is understood, is largely based on representations from this department, made in view of the fact that the Attorney General holds that under the trading with the enemy act in its present form, he is unable to release property to

owners, who when it was taken over were included, for any reason, in the terms 'enemy' or 'ally of enemy' as used in the act and consequently in spite of strong representations by various neutral and associated governments, it has been impossible to return the property of their nationals, which it would appear this Government should no longer retain. To longer retain property of this character can hardly fail to unfavorably affect the relations of this Government with the Governments concerned, and I am strongly of the opinion that section 9 of the act should be amended at an early date, so as to permit in proper cases the return of such property."

It is submitted that this letter, like that of the Attorney-General, was written in the belief that the draft bill in question would relieve persons theretofore classified as "enemies" or "allies of enemies" under the Act, and not cut down the remedies or rights of those who were not then and never had been classified as "enemies" or "allies of enemies" in the Act.

In the Senate Senator Lodge explained the bill by saying (66th Congress, 2nd session, 58 Cong. Rec., pt. 8, p. 8473)—

"The main purpose of the bill which has been very carefully prepared by the State Department and the Department of Justice and to which the House has given a great deal of attention, and our Committee on the Judiciary, is to return money seized as of alien enemies to the people who are really not alien enemies or technically so."*

The Alien Property Custodian testifying before the House committee with reference to kindred bills (H. R.

* A similar statement was made to the Senate by Senator Brandegee of the Judiciary Committee.

12651 and 12884), made the following suggestion (Hearings, March 23, April 2nd and 27th, 1920, p. 4) :

“Mr. Garvan. The main [suggestion I have to make] is to have the bill conform to section 9 of the present act. Under the present act non-enemies are able to reclaim their property under section 9. That has built up a procedure and rulings; forms have been decided upon and tested by a long series of claims. The expense to the Government would be much less and it would be much simpler to administer . . . if this act just extended the number of persons who could claim under present section 9. Then it would allow them to be considered just as United States citizens returning to this country now are considered; so that if you do decide to return this property I think that just enlarging the definition of the people who could claim under section 9 would much more easily and simply accomplish your purpose.”

It must thus be manifest that the draftsmen of the amendatory statutes accepted the Alien Property Custodian's advice, and that they intended merely to enlarge the class of persons who could claim under section 9, and not to restrict it. No one then made any suggestion that certain classes of non-enemy claimants be excluded from relief; and, indeed, the contention has never been put forward, so far as we can ascertain, until recently.

To accomplish the remedial purpose declared in the documents above referred to, Congress added subsection b to section 9. That subsection contained various new provisions. These provisions did not, however, purport to alter in any respect subsection a, which, as theretofore, authorized the President, but only upon application by persons not enemies or allies thereof, to return

seized property or its proceeds. The new provision now granted to the President additional power to order the return of property or its proceeds, "without any application being made therefor" in certain cases of *enemy* persons. Thus, where the seizure had *rightfully* taken or affected the rights of (1) a neutral, or (2) a neutral woman married to a German or Austrian, or (3) an American woman married to a German or Austrian, or (4) an enemy diplomat, or (5) an interned enemy, or (6) a corporation or partnership entirely owned by others than Germans, Austrians or Hungarians, or (7) the governments of Bulgaria or Turkey, or (8) the governments of Germany, Austria or Hungary in so far as their diplomatic property was concerned, etc., the amendments empowered the President to grant relief, not alone where application had been duly made as prescribed in subsection a, and not only to the individuals in that subsection mentioned, namely, "persons not enemy or ally of enemy", but even "without any application being made therefor" at all, and to all those classes of individuals—in addition to those enumerated in subsection a—who, although enemies, were now specified in the new provisions. In other words, subsection a was not in any respect affected, restricted, or limited in its scope and effect by the new subsection b.

The only provisions of subsections b and c of section 9 which have any bearing in the case at bar are as follows:

"(b) In respect of all money or other property conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian or seized by him hereunder and held by him or by the Treasurer of

the United States, if the President shall determine that the owner thereof at the time such money or other property was required to be so conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian or at the time when it was voluntarily delivered to him or was seized by him was . . .

“(6) A partnership, association, or other unincorporated body of individuals outside the United States, or a corporation incorporated within any country other than the United States, and was entirely owned at such time by subjects or citizens of nations, States, or free cities other than Germany or Austria, or Hungary or Austria-Hungary and is so owned at the time of the return of its money or other property hereunder; . . .

“then the President, without any application being made therefor, may order the payment, conveyance, transfer, assignment, or delivery of such money or other property held by the Alien Property Custodian or by the Treasurer of the United States, or of the interest therein to which the President shall determine such person entitled, either to the said owner or to the person by whom said property was conveyed, transferred, assigned, delivered or paid over to the Alien Property Custodian.

“(c) Any person whose property the President is authorized to return under the provisions of subsection (b) hereof may file notice of claim for the return of such property as provided in subsection (a) hereof, and thereafter may make application to the President for allowance of such claim and/or may institute suit in equity to recover such property, as provided in said subsection, and with like effect.”

There is in the foregoing provisions no language which either expressly or by reasonable implication can be deemed to alter the definition of the terms “enemy” and “ally of the enemy” in section 2, nor any language

which either expressly or by reasonable implication can be regarded as limiting or abridging the force and effect of subsection a of section 9. Subsection a still regulates and controls, as it did before, the right of "any person not an enemy or ally of enemy" to make a claim or bring suit for property wrongfully or mistakenly seized as enemy-owned. Subsection b now regulates and controls the right of certain enumerated classes of persons (including corporations incorporated or doing business in enemy territory), theretofore defined as "enemies" or "allies of enemies", to make claims and bring suit for property rightfully and lawfully seized as enemy-owned. Each of the two subsections, therefore, has its own proper field of operation and neither is a limitation upon the other.

There is nothing in the language of paragraph 6 of subsection b to indicate that it was creating a condition precedent or limitation upon subsection a, any more than there is in the language of any of the other paragraphs of subsection b, and the suggestion that these latter constitute such conditions or limitations should be rejected as wholly unwarranted.

The defendants, however, declare that this limiting and repressive intent is evidenced by the provisions of subsection e of section 9. Analysis of that portion of the section, however, will at once disclose the contrary. Thus, the first clause of subsection e provides that—

"No money or other property shall be returned nor any debt allowed under this section to any person who is a citizen or subject of any nation which was associated with the United States in the prosecution of the war, unless such nation in like

case extends reciprocal rights to citizens of the United States."

It must be manifest that the purpose of the foregoing clause is further to relieve and benefit citizens of the United States by compelling our allies to do at least as much for our citizens as we are now doing for theirs. It would have been unwise for the United States to relieve from a prior lawful seizure of property, let us say, a British subject who had but recently ceased to live in Germany, if Great Britain in a similar case did not do as much for American citizens. It was plainly appropriate for Congress to provide in a statute liberalizing the administration of the Act largely for the benefit of subjects of our allies, that the same measure of justice and relief as the United States was granting to their subjects should be accorded by the allies to our people. Such legislative action would tend to induce similar actions by our allies; and it was, therefore, well calculated to win a larger measure of relief than had theretofore been available to war sufferers the world over. There is nothing repressive in such legislative action; and certainly nothing from which to infer that Congress intended subsection a of section 9, which affected non-enemies, to be restricted by all the terms and conditions to be found in subsection b, which affected only "enemies" and their allies.

The other provisions in subsection e are equally without significance in the case at bar. The second clause provides:

"Nor in any event shall a debt be allowed under this section unless it was owing to and owned by the claimant prior to October 6, 1917,"

which is the date when the Trading with the Enemy Act was approved. The purpose of this provision was clearly to prevent the dissipation of moneys in the hands of the Alien Property Custodian because of the payment of debts created by the Germans after the seizure of their property. The right of the Alien Property Custodian to seize property would have been practically worthless if after the seizure the "enemy" could still utilize the sequestered property to pay his subsequently incurred debts to neutrals. A similar intention to preserve enemy property, duly taken and sequestered by the Alien Property Custodian, from being utilized to pay unrelated claims of foreigners to the prejudice perhaps of American claimants and the United States, underlies the final provision of subsection e that "as to claimants other than citizens of the United States [no debt should be allowed] unless it arose with reference to the money or other property held by the Alien Property Custodian."

It should also be pointed out to the court that, in fact, these provisions of subsection e were not intended to change the pre-existing law at all. So it was distinctly testified before the Committee on Interstate and Foreign Commerce of the House of Representatives by Mr. Lucien H. Boggs, the assistant to the Attorney-General, who had the amendatory bill (H. R. 14208) in charge (Hearings, 66th Congress, 2nd session, May 25, 1920, pp. 19-20). He summarized his statement on this point as follows (*id.*, p. 20):

"This section [that is, subsection e of section 9] is merely declaratory of the interpretation that the department put upon it [that is, the Act as unamended]."

As further showing that the amendment of June 5th, 1920, was not intended to be a restriction of the plain wording of section 9-a, it is to be observed that subsection c, which the defendants claim bars the plaintiff from its remedy, contains a blanket incorporation of the remedy provided in section 9-a as follows:

“Any person whose property the President is authorized to return under the provisions of subsection b hereof may file notice of claim for the return of such property as provided in subsection a hereof, and thereafter may make application to the President for allowance of such claim and/or may institute a suit in equity to recover such property as provided in said subsection and with like effect.”

This language plainly enacted the suggestion of the Alien Property Custodian, referred to above, that the amendment “just extend the number of persons who could claim under present section 9.” It is not reasonable to assume that the very same subsection which adopts all the procedural provisions of subsection a was intended to restrict and limit those for whose benefit the procedure is and was primarily provided. The defendants contend that subsection c should be construed as though it read: “*Only* a person whose property the President is authorized to return under the provisions of subsection b hereof may file notice of claim,” etc. But no words implying that meaning are found in the amendment. On the contrary, subsection a with its plain and unmistakable language was expressly reenacted at the same time that subsection c was adopted.

Another clear indication that subsection a should be construed as unaffected by subsections b and c is found

in the case of *Nortz v. Miller*, 285 Fed. 778, affirmed *id.* 781. There a citizen of Germany resident in the United States sued under section 9 to recover a debt out of property seized by the Alien Property Custodian. Recovery was denied because the debt did not arise with reference to the property seized; but it was nowhere suggested that the plaintiff had no legal right to institute the suit. Yet he came within none of the paragraphs of subsection b but only within subsection a. Hence under the defendants' argument in this case, he should have been barred from any standing in court by reason of subsection c. He was, however, allowed to sue and his bill dismissed upon other grounds.

In *Schutte v. Miller*, 287 Fed. 604, 606, the court below gave its conclusion as to the effect of subsection b of section 9 in the following language:

"The act further provided that any person not an enemy, or ally of enemy, claiming any interest, right, or title in any money or other property which may have been delivered to the Alien Property Custodian thereunder, or to whom any debt may be owing from an enemy or ally of enemy, whose property or any part thereof, shall have been delivered to the Alien Property Custodian thereunder, may within a prescribed time institute a suit in equity, making the Alien Property Custodian and the Treasurer of the United States defendants, to establish the interest, right, title, or debt so claimed. *Under a later amendment*, 41 Stat. 977, authority was given to the President to return to certain classes of persons who fell within the definition of the word 'enemy' all such property as may have been taken from them by the Alien Property Custodian under the act as theretofore provided. These classes included certain

citizens of friendly nations, certain women intermarried with citizens of Germany or Austria, certain diplomatic or consular officers of enemy nations, and other classes who had come literally within the term 'enemy', but whom Congress wished to relieve from that disqualification."

That the construction which is now urged in this brief is in accord with the intent of Congress, must also be apparent from section 9, subdivision d, which originally was part of the amendment of June 5, 1920, and is now to be found in the amendment adopted March 4, 1923 (c. 285, 42 Stat. 1511), in the enactment known as the "Winslow Act." It provides as follows:

"(d) Whenever a person, deceased, would have been entitled, if living, to the return of his money or other property hereunder, then his legal representative may proceed for the return of such money or other property as provided in subsection (a) hereof: *Provided, however,* That the President or the court, as the case may be, before granting such relief shall impose such conditions by way of security or otherwise, as the President or the court, respectively, shall deem sufficient to insure that such legal representative will redeliver to the Alien Property Custodian such portion of the money or other property so received by him as shall be distributable to any person not eligible as a claimant under subsections (a) or (c) hereof."

The significant part is the last clause of this subsection requiring a bond to insure redelivery of any money or property distributable to any person not eligible as a claimant under subsections a or c hereof. If the defendants' contention be correct, there can be no recovery under subsection a at all but only under sub-

section c. But Congress has declared that a person may be a claimant under subsection a *or* c, thus clearly indicating that subsections b and c are extensions of and co-existent with subsection a, as we contend, and not limitations or restrictions of subsection a, as the defendants contend.

The statute read as a whole is clear and simple: if the plaintiff is "not an enemy or ally of enemy", the remedy is under subsection a; if, however, the plaintiff be an "enemy or ally of enemy", then the remedy is under subsection b, or not at all. Obviously, if the plaintiff, because an "enemy or ally of enemy", could claim only under subsection b, the plaintiff would have to comply with the provisions of that subsection; and, if a corporation, would have to comply with the requirements of paragraph 6 thereof and be "entirely owned" by non-enemy individuals. Subsection a, however, is not similarly limited. It deals only with non-enemies and makes no distinction between them. In the nature of things, it could not have reasonably been otherwise. It was essential to the validity of the Act that persons, *not* "enemies" or "allies of enemies", should have the right to recover property erroneously taken from them. If they were in fact not "enemies" or "allies of enemies", their property should not have been disturbed in the first place. As we have seen, it is immaterial so far as the enemy or non-enemy character of a corporation is concerned, whether or not any of its capital stock was owned by Germans. In either contingency, it was equally a violation of the Act to seize the property of a neutral or allied corporation not doing business in or

with enemy territory, and hence it was clearly the purpose and intent of the Act equally to afford a remedy in all such cases.

Where the rights of "enemies" are concerned, however, the matter stands upon an entirely different footing. The return of their property is not a matter of right but of grace. It may be made conditional in any manner in which Congress sees fit. Under subsection b, therefore, paragraph 6 requiring enemy corporations to be entirely non-enemy-owned is appropriate. That enables corporations which are incorporated in Germany, or which did business there, for example, to have relief, if none of their stockholders was German. Corporations of this sort may be reasonably classified as a group of "enemies" under the Act who are, nevertheless, entitled to special consideration and grace not to be allowed to other "enemy" or "ally of enemy" corporations.

The decision in *Swiss Nat. Ins. Co. v. Miller*, 289 Fed. 571, decided in the court below and now pending on appeal in this court, is not opposed to the contention in this brief. In that case, the plaintiff admitted that it had been engaged in business in Germany at the time of the seizure, and hence was clearly an "enemy" under section 2-a, which defines an "enemy" as "any corporation . . . incorporated within any country other than the United States and doing business within such territory," *i. e.*, the territory of any nation with which the United States is at war; and the court specifically held that the cessation of doing business in an enemy country did not remove the taint of enemy character (289 Fed. at p. 573). It was, therefore, impossible for the

Swiss Insurance Company in the case referred to, to come within the terms of section 9-a allowing "any person not an enemy or ally of enemy" to sue. Hence the decision of the court is in no way inconsistent with the contentions in the case at bar, since Behn, Meyer & Company, the plaintiff herein, never did business in any enemy country, never was an "enemy" under the Act, and, consequently, comes within the class of suitors provided for in subsection a of section 9 of the Act.

The plaintiff in the *Swiss Insurance Company* case being an "enemy", had to find relief, if at all, under the terms of subsection b. It had to bring itself within the provisions of paragraph 6 of that subsection, inasmuch as it was a corporation and the terms of paragraph 6 were applicable to enemy corporations. As a part of the stock of the Swiss Insurance Company was concededly owned by enemy individuals, however, the plaintiff in that case could not make compliance with the only provisions of the enabling act under which it could claim. Accordingly, as above stated, it was denied relief.

In the case at bar, however, the plaintiff corporation is not an "enemy." It is not seeking to avail of a legislative favor under subsection b, but only of its lawful rights under subsection a, and hence it is wholly unaffected by the requirements of paragraph 6 of subsection b.

Whether or not enemy property in the United States shall be captured at all, or only in part, and in what manner and under what conditions, is not a judicial, but a legislative matter. The power is given by the Constitution to Congress and not to the courts. Who shall

be regarded as an "enemy" under a statute providing for the seizure and sequestration of enemy-owned property, is for Congress alone to say. The definitions which it lays down to that end, therefore, may not be either restricted or enlarged by the judicial power, whatever may be the views of the courts as to the wisdom or folly of the Congressional action. What Congress has thus omitted, the courts may not add. Here, it is submitted, it is too plain to permit of any construction that a corporation which is not incorporated in enemy territory and which does no business there, is not an "enemy" for any of the purposes of the Trading with the Enemy Act (sec. 2); that, not being an "enemy", its property may not lawfully be seized by the Alien Property Custodian, and that an unlawful taking thereof necessarily gives rise to the cause of action expressly authorized by subsection a of section 9 to be brought by "any person not an enemy or ally of enemy."

In the case at bar, the British corporation which is the plaintiff, was doing business in British, American and neutral territory. It was not in any degree fostering or aiding enemy commerce or contributing to the means or wealth of the enemy. The bill alleges that it was organized in 1905 (p. 1). It is impossible, therefore, to compare it with companies formed on the eve of the war or during the war in order to accomplish some covert purpose. There is no basis for any such contention here. The plaintiff company was formed nearly a dozen years before the war; it never had done any business in any enemy country; its business had always been an ordinary merchandising business; its legal domicile was not in

Germany, nor even in any neutral country like Switzerland where there might be a possibility of clandestine communication with the enemy, but in the territory of one of our allies, Great Britain. To deny it relief is, we submit, to render irreparable the gross wrong that the Alien Property Custodian did in seizing the plaintiff's property as that of an "enemy" when in fact and law the plaintiff was not an "enemy." "When the seizure is unlawful, the petition under section 9 does no more than establish the plaintiff's right and the consequent illegality of the capture. . . . Anything else would be a premium upon lawless seizures by the sovereign, the fountain of justice." *Simon v. Miller*, 298 Fed. 520, 524, 525.

The court below recognized that the "plaintiff is in its corporate entity non-enemy", that "by this amendment [to section 9 of the Trading with the Enemy Act] it was clearly the intent of Congress to liberalize and enlarge the right of recovery," and that "the 1923 amendment is a further enlargement of the rights of claimants" (296 Fed. at p. 1003; p. 10). It nowhere declared that either the 1920 or 1923 amendment revised or extended the statutory definition of "enemy", or in any wise conferred upon it a meaning different from that expressly laid down in section 2. The court below did not cite or rely upon the English cases referred to by the defendants; it doubtless realized that they were only illustrations of the so-called "stock control theory" of enemy character of corporations, which Congress, as we have seen, had deliberately rejected in adopting the

statutory definition of "enemy". Nevertheless, the court below erroneously held that the plaintiff was not entitled to recover, because "a portion of its stock is enemy-owned" (*id.*). Having previously declared that a corporation was an "enemy" "even if only one stockholder out of many [was] an enemy" (*Swiss Nat. Ins. Co. v. Miller*, 289 Fed. 571, 576), the court below presumably deemed itself bound by that rule. We submit that there is nothing in the Act to warrant it.

The court below also referred to paragraph 11 of subsection b of section 9. That was one of the paragraphs added by the amendment of March 4, 1923 (c. 285, 42 Stat. 1511), or the so-called Winslow Act. That statute, which was indisputably intended further to ameliorate the conditions of "enemies", added several new paragraphs to subsection b of section 9. It provided for the release of ten thousand dollars in money or property to "enemy" individuals and corporations. In addition, in the new paragraph numbered 11, it provided for the release of *all* property belonging to "enemy" corporations in which a majority of the stock was non-enemy-owned. In other words, it extended the relief previously accorded to "enemy" corporations in the amendment of June 5, 1920 (sec. 9b, par. 6). As we have seen above, just as paragraph 6 of subsection b of section 9 which was manifestly intended by Congress to benefit "enemy" corporations entirely non-enemy-owned and to have no restrictive effect on non-enemy corporations, was construed in the courts below to bar non-enemy corporations with even a single enemy stockholder, so now the court

below repressively construed the new paragraph 11 of the same subsection. Instead of applying it remedially and exclusively to cases of "enemy" corporations a majority of whose stock was non-enemy owned, the court applied it restrictively and to non-enemy corporations whose property had been previously wrongfully seized by the Alien Property Custodian. In so doing, it is confidently submitted that the court below made the same error in construing paragraph 11 which it made in construing paragraph 6 of subsection b. It entirely misconceived the scheme of section 9; it failed to observe that subsection a thereof was applicable *solely to non-enemies*, individual and corporate, and that subsection b was applicable, in all its separately numbered paragraphs, *solely to "enemies,"* individual and corporate, and was not a limitation or restriction upon the preceding subsection. That is the fundamental error which led to the erroneous ruling of the lower courts herein.

CONCLUSION.

It is, therefore, submitted that as the plaintiff corporation was not an "enemy" or "ally of enemy" under the Trading with the Enemy Act, it was unlawful to have seized and liquidated its property as though it were an "enemy" or "ally of enemy"; that it is clearly entitled, because not "an enemy or ally of enemy", to sue under subsection a of section 9 of the Act for the proceeds of its property unlawfully seized and sold, and that nothing contained in subsection b of section 9 was

intended to bar it from relief. Accordingly, the decrees of the courts below dismissing the bill of complaint herein were erroneous and should be reversed, and the motion of the defendants in all respects denied.

Washington, D. C., November, 1924.

WILLIAM D. GUTHRIE,
ISIDOR J. KRESEL,
BERNARD HERSHKOPF,
Of counsel for the appellant.

Office Supreme Court, U. S.

FILED

OCT 30 1924

WM. R. STANLEY

Supreme Court of the United States,

OCTOBER TERM, 1924, No. 343.

BEHN, MEYER & COMPANY, LIMITED,
Appellant,

v.

THOMAS W. MILLER, as Alien Property Custodian, and
FRANK WHITE, as Treasurer of the United States,
Appellees.

APPEAL FROM THE COURT OF APPEALS OF THE
DISTRICT OF COLUMBIA.

APPENDIX TO BRIEF ON BEHALF OF
THE APPELLANT.

(AMENDMENTS TO SECTION 9 OF THE TRADING WITH
THE ENEMY ACT.)

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APPENDIX.

(41 Stat. 977)

CHAP. 241.—An Act to amend section 9 of an Act entitled "An Act to define, regulate, and punish trading with the enemy, and for other purposes," approved October 6, 1917, as amended.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 9 of an Act entitled "An Act to define, regulate, and punish trading with the enemy, and for other purposes," approved October 6, 1917, as amended, be, and hereby is, amended so as to read as follows:

"Sec. 9. (a) That any person not an enemy or ally of enemy claiming any interest, right, or title in any money or other property which may have been conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian or seized by him hereunder and held by him or by the Treasurer of the United States, or to whom any debt may be owing from an enemy or ally of enemy whose property or any part thereof shall have been conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian or seized by him hereunder and held by him or by the Treasurer of the United States may file with the said custodian a notice of his claim under oath and in such form and containing such particulars as the said custodian shall require; and the President, if application is made therefor by the claimant, may order the payment, conveyance, transfer, assignment, or delivery to said claimant of the money or other property so held by the Alien Property Custodian or by the Treasurer of the United States, or of the interest therein to which the President shall determine said claimant is entitled: *Provided*, That no such order by the President shall bar any person from the prosecution of any suit at law or in equity against the claimant to establish any right, title, or interest which he may have in such money or other property. If the President shall not so order within sixty days after the filing of such application or if the claimant shall have filed the notice as above required and shall have made no application to the President, said

claimant may, at any time before the expiration of six months after the end of the war institute a suit in equity in the Supreme Court of the District of Columbia or in the district court of the United States for the district in which such claimant resides, or, if a corporation, where it has its principal place of business (to which suit the Alien Property Custodian or the Treasurer of the United States, as the case may be, shall be made a party defendant), to establish the interest, right, title, or debt so claimed, and if so established the court shall order the payment, conveyance, transfer, assignment, or delivery to said claimant of the money or other property so held by the Alien Property Custodian or by the Treasurer of the United States or of the interest therein to which the court shall determine said claimant is entitled. If suit shall be so instituted, then such money or property shall be retained in the custody of the Alien Property Custodian, or in the Treasury of the United States, as provided in this Act, and until any final judgment or decree which shall be entered in favor of the claimant shall be fully satisfied by payment or conveyance, transfer, assignment, or delivery by the defendant, or by the Alien Property Custodian or Treasurer of the United States on order of the court, or until final judgment or decree shall be entered against the claimant, or suit otherwise terminated.

“(b) In respect of all money or other property conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian or seized by him hereunder and held by him or by the Treasurer of the United States, if the President shall determine that the owner thereof at the time such money or other property was required to be so conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian or at the time when it was voluntarily delivered to him or was seized by him was—

“(1) A citizen or subject of any nation or State or free city other than Germany or Austria or Hungary or Austria-Hungary, and is at the time of the return of such money or other property hereunder a citizen or subject of any such nation or State or free city; or

“(2) A woman who at the time of her marriage was a subject or citizen of a nation which has remained neutral in the war, or of a nation which was associated with the United States, in the prosecution of said war, and who prior to April 6, 1917, intermarried with a subject or citizen of Germany or Austria-Hungary and that the money or other property concerned was not acquired by such woman either directly or indirectly from any subject or citizen of Germany or Austria-Hungary; or

“(3) A woman who at the time of her marriage was a citizen of the United States (said citizenship having been acquired by birth in the United States), and who prior to April 6, 1917, intermarried with a subject or citizen of Germany or Austria-Hungary, and that the money or other property concerned was not acquired by such woman either directly or indirectly from any subject or citizen of Germany or Austria-Hungary; or

“(4) A citizen or subject of Germany or Austria or Hungary or Austria-Hungary and was, at the time of the severance of diplomatic relations between the United States and such nations, respectively, accredited to the United States as a diplomatic or consular officer of any such nation, or the wife or minor child of such officer and that the money or other property concerned was within the territory of the United States by reason of the service of such officer in such capacity; or

“(5) A citizen or subject of Germany or Austria-Hungary, who by virtue of the provisions of sections 4067, 4068, 4069, and 4070 of the Revised Statutes, and of the proclamations and regulations thereunder, was transferred, after arrest, into the custody of the War Department of the United States for detention during the war and is at the time of the return of his money or other property hereunder living within the United States; or

“(6) A partnership, association, or other unincorporated body of individuals outside the United States, or a corporation incorporated within any country other than the United States, and was entirely owned at such time by subjects or citizens of nations, States, or free cities other than Germany or Austria or Hungary or Austria-Hungary and is so owned at the time of the return of its money or other property hereunder; or

"(7) The Government of Bulgaria or Turkey, or any political or municipal subdivision thereof; or

"(8) The Government of Germany or Austria or Hungary or Austria-Hungary, and that the money or other property concerned was the diplomatic or consular property of such Government—then the President, without any application being made therefor, may order the payment, conveyance, transfer, assignment, or delivery of such money or other property held by the Alien Property Custodian or by the Treasurer of the United States, or of the interest therein to which the President shall determine such person entitled, either to the said owner or to the person by whom said property was conveyed, transferred, assigned, delivered, or paid over to the Alien Property Custodian; *Provided*, That no person shall be deemed or held to be a citizen or subject of Germany or Austria or Hungary or Austria-Hungary for the purposes of this section, even though he was such citizen or subject at the time first specified in this subsection, if he has become or shall become ipso facto or through exercise of option, a citizen or subject of any nation or State or free city other than Germany, Austria, or Hungary, (first) under the terms of such treaties of peace as have been or may be concluded subsequent to November 11, 1918, between Germany or Austria or Hungary (of the one part) and the United States and/or three or more of the following named powers: The British Empire, France, Italy, and Japan (of the other part), or (second) under the terms of such treaties as have been or may be concluded in pursuance of the treaties of peace aforesaid between any nation, State, or free city (of the one part) whose territories, in whole or in part, on August 4, 1914, formed a portion of the territory of Germany or Austria-Hungary and the United States and/or three or more of the following-named powers: The British Empire, France, Italy, and Japan (of the other part). For the purposes of this section any citizen or subject of a State or free city which at the time of the proposed return of money or other property of such citizen or subject hereunder forms a part of the territory of any one of the following nations: Germany, Austria, or Hungary, shall be

deemed to be a citizen or subject of such nation. And the receipt of the said owner or of the person by whom said property was conveyed, transferred, assigned, delivered, or paid over to the Alien Property Custodian shall be a full acquittance and discharge of the Alien Property Custodian or the Treasurer of the United States, as the case may be, and of the United States in respect to all claims of all persons heretofore or hereafter claiming any right, title, or interest in said property, or compensation or damages arising from the capture of such property by the President or the Alien Property Custodian: *Provided further, however,* That except as herein provided no such action by the President shall bar any person from the prosecution of any suit at law or in equity to establish any right, title, or interest which he may have therein.

“(c) Any person whose property the President is authorized to return under the provisions of subsection (b) hereof may file notice of claim for the return of such property, as provided in subsection (a) hereof, and thereafter may make application to the President for allowance of such claim and/or may institute suit in equity to recover such property, as provided in said subsection, and with like effect. The President or the court, as the case may be, may make the same determinations with respect to citizenship and other relevant facts that the President is authorized to make under the provisions of subsection (b) hereof.

“(d) Whenever a person, deceased, would have been entitled, if living, to the return of his money or other property hereunder, then his legal representative may proceed for the return of such property as provided in subsection (a) hereof: *Provided, however,* That the President or the court, as the case may be, before granting such relief shall impose such conditions by way of security or otherwise as the President or the court, respectively, shall deem sufficient to insure that such legal representative will redeliver to the Alien Property Custodian such portion of the money or other property so received by him as shall be distributable to any person not eligible as a claimant under subsections (a) or (c) hereof.

“(e) No money or other property shall be returned nor any debt allowed under this section to any person who is a citizen or subject of any nation which was associated with the United States in the prosecution of the war, unless such nation in like case extends reciprocal rights to citizens of the United States; nor in any event shall a debt be allowed under this section unless it was owing to and owned by the claimant prior to October 6, 1917, and as to claimants other than citizens of the United States unless it arose with reference to the money or other property held by the Alien Property Custodian or Treasurer of the United States hereunder.

“(f) Except as herein provided, the money or other property conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian, shall not be liable to lien, attachment, garnishment, trustee process, or execution, or subject to any order or decree of any court.

“(g) This section shall not apply, however, to money paid to the Alien Property Custodian under section 10 hereof.”

Approved, June 5, 1920.

(41 Stat. 1147.)

CHAP. 76.—An Act to amend section 9 of an Act entitled “An Act to define, regulate and punish trading with the enemy, and for other purposes,” approved October 6, 1917, as amended.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled. That subdivisions (2) and (3) of subsection (b) of section 9 of an Act entitled “An Act to define, regulate, and punish trading with the enemy, and for other purposes,” approved October 6, 1917, as amended, be, and hereby are, amended so as to read as follows:

“(2) A woman who, at the time of her marriage, was a subject or citizen of a nation which has remained neutral in the war, or of a nation which was associated with the United States in the prosecution of said war, and who, prior to April 6, 1917, intermarried with a subject or citizen of Germany, or Austria-Hungary and that the

money or other property concerned was not acquired by such woman either directly or indirectly, from any subject or citizen of Germany or Austria-Hungary subsequent to January 1, 1917.

“(3) A woman who, at the time of her marriage, was a citizen of the United States and who, prior to April 6, 1917, intermarried with a subject or citizen of Germany or Austria-Hungary, and that the money or other property concerned, was not acquired by such woman, either directly or indirectly, from any subject or citizen of Germany or Austria-Hungary subsequent to January 1, 1917.”

Approved, February 27, 1921.

(42 Stat. 1511.)

CHAP. 285.—An Act to amend the Trading with the Enemy Act.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 9 of the “Trading with the Enemy Act,” as amended, is amended to read as follows:

“Sec. 9. (a) That any person not an enemy or ally of enemy claiming any interest, right, or title in any money or other property which may have been conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian or seized by him hereunder and held by him or by the Treasurer of the United States, or to whom any debt may be owing from an enemy or ally of enemy whose property or any part thereof shall have been conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian or seized by him hereunder and held by him or by the Treasurer of the United States may file with the said custodian a notice of his claim under oath and in such form and containing such particulars as the said custodian shall require; and the President, if application is made therefor by the claimant, may order the payment, conveyance, transfer, assignment, or delivery to said claimant of the money or other property so held by the Alien Property Custodian or by the Treasurer of the United States, or of the interest therein to which the

President shall determine said claimant is entitled: *Provided*, That no such order by the President shall bar any person from the prosecution of any suit at law or in equity against the claimant to establish any right, title, or interest which he may have in such money or other property. If the President shall not so order within sixty days after the filing of such application or if the claimant shall have filed the notice as above required and shall have made no application to the President, said claimant may institute a suit in equity in the Supreme Court of the District of Columbia or in the district court of the United States for the district in which such claimant resides, or, if a corporation, where it has its principal place of business (to which suit the Alien Property Custodian or the Treasurer of the United States, as the case may be, shall be made a party defendant), to establish the interest, right, title, or debt, so claimed, and if so established the court shall order the payment, conveyance, transfer, assignment, or delivery to said claimant of the money or other property so held by the Alien Property Custodian or by the Treasurer of the United States or the interest therein to which the court shall determine said claimant is entitled. If suit shall be so instituted, then such money or property shall be retained in the custody of the Alien Property Custodian, or in the Treasury of the United States, as provided in this Act, and until any final judgment or decree which shall be entered in favor of the claimant shall be fully satisfied by payment or conveyance, transfer, assignment, or delivery by the defendant, or by the Alien Property Custodian, or Treasurer of the United States on order of the court, or until final judgment or decree shall be entered against the claimant or suit otherwise terminated.

“(b) In respect of all money or other property conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian or seized by him hereunder and held by him or by the Treasurer of the United States, if the President shall determine that the owner thereof at the time such money or other property was required to be so conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian or at the time when it was

voluntarily delivered to him or was seized by him was—

“(1) A citizen or subject of any nation or State or free city other than Germany or Austria or Hungary or Austria-Hungary, and is at the time of the return of such money or other property hereunder a citizen or subject of any such nation or State or free city; or

“(2) A woman who, at the time of her marriage, was a subject or citizen of a nation which has remained neutral in the war, or of a nation, which was associated with the United States in the prosecution of said war, and who, prior to April 6, 1917, intermarried with a subject or citizen of Germany or Austria-Hungary and that the money or other property concerned was not acquired by such woman, either directly or indirectly from any subject or citizen of Germany or Austria-Hungary subsequent to January 1, 1917; or

“(3) A woman who at the time of her marriage was a citizen of the United States, and who prior to April 6, 1917, intermarried with a subject or citizen of Germany or Austria-Hungary and that the money or other property concerned was not acquired by such woman, either directly or indirectly, from any subject or citizen of Germany or Austria-Hungary subsequent to January 1, 1917; or who was a daughter of a resident citizen of the United States and herself a resident or former resident thereof, or the minor daughter or daughters of such woman, she being deceased; or

“(4) A citizen or subject of Germany or Austria or Hungary or Austria-Hungary and was at the time of the severance of diplomatic relations between the United States and such nations, respectively, accredited to the United States as a diplomatic or consular officer of any such nation, or the wife or minor child of such officer, and that the money or other property concerned was within the territory of the United States by reason of the service of such officer in such capacity; or

“(5) A citizen or subject of Germany or Austria-Hungary, who by virtue of the provisions of sections 4067, 4068, 4069, and 4070 of the Revised Statutes, and of the proclamations and regulations thereunder, was transferred, after arrest, into the custody of the War

Department of the United States for detention during the war and is at the time of the return of his money or other property hereunder living within the United States; or

“(6) A partnership, association, or other unincorporated body of individuals outside the United States, or a corporation incorporated within any country other than the United States, and was entirely owned at such time by subjects or citizens of nations, States or free cities, other than Germany, or Austria, or Hungary or Austria-Hungary, and is so owned at the time of the return of its money or other property hereunder; or

“(7) The Government of Bulgaria or Turkey, or any political or municipal subdivision thereof; or

“(8) The Government of Germany or Austria or Hungary or Austria-Hungary, and that the money or other property concerned was the diplomatic or consular property of such Government; or

“(9) An individual who was at such time a citizen or subject of Germany, Austria, Hungary, or Austria-Hungary, or who is not a citizen or subject of any nation, State, or free city, and that such money or other property, or the proceeds thereof, if the same has been converted, does not exceed in value the sum of \$10,000, or although exceeding in value the sum of \$10,000 is nevertheless susceptible of division, and the part thereof to be returned hereunder does not exceed in value the sum of \$10,000: *Provided*, That an individual shall not be entitled, under this paragraph, to the return of any money or other property owned by a partnership, association, unincorporated body of individuals, or corporation at the time it was conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian, or seized by him hereunder; or

“(10) A partnership, association, other unincorporated body of individuals, or corporation, and that it is not otherwise entitled to the return of its money or other property, or any part thereof, under this section, and that such money or other property, or the proceeds thereof, if the same has been converted, does not exceed in value the sum of \$10,000, or although exceeding in value the sum of \$10,000, is nevertheless susceptible of

division, and the part thereof to be returned hereunder does not exceed in value the sum of \$10,000: *Provided*, That no insurance partnership, association, or corporation, against which any claim or claims may be filed by any citizen of the United States with the Alien Property Custodian within sixty days after the time this paragraph takes effect, whether such claim appears to be barred by the statute of limitations or not, shall be entitled to avail itself of the provisions of this paragraph until such claim or claims are satisfied; or

“(11) A partnership, association, or other unincorporated body of individuals, having its principal place of business “within any country other than Germany, Austria, Hungary, or Austria-Hungary,” or a corporation, organized or incorporated within any country other than Germany, Austria, Hungary, or Austria-Hungary, and that the control of, or more than 50 per centum of the interests or voting power in, any such partnership, association, other unincorporated body of individuals, or corporation, was at such time, and is at the time of the return of any money or other property, vested in citizens or subjects of nations, States, or free cities other than Germany, Austria, Hungary or Austria-Hungary: *Provided*, however, That this subsection shall not affect any rights which any citizen or subject may have under paragraph (1) of this subsection;—

“Then the President, without any application being made therefor, may order the payment, conveyance, transfer, assignment, or delivery of such money or other property held by the Alien Property Custodian or by the Treasurer of the United States, or of the interest therein to which the President shall determine such person entitled, either to the said owner or to the person by whom said property was conveyed, transferred, assigned, delivered, or paid over to the Alien Property Custodian: *Provided*, That no person shall be deemed or held to be a citizen or subject of Germany or Austria or Hungary or Austria-Hungary for the purposes of this section, even though he was such citizen or subject at the time first specified in this subsection, if he has become or shall become, ipso facto or through exercise of option, a citizen

or subject of any nation or State or free city other than Germany, Austria, or Hungary, (first) under the terms of such treaties of peace as have been or may be concluded subsequent to November 11, 1918, between Germany or Austria or Hungary (of the one part) and the United States and/or three or more of the following-named powers: The British Empire, France, Italy, and Japan (of the other part), or (second) under the terms of such treaties as have been or may be concluded in pursuance of the treaties of peace aforesaid between any nation, State, or free city (of the one part) whose territories, in whole or in part, on August 4, 1914, formed a portion of the territory of Germany or Austria-Hungary and the United States and/or three or more of the following-named powers: The British Empire, France, Italy, and Japan (of the other part). For the purposes of this section any citizen or subject of a State or free city which at the time of the proposed return of money or other property of such citizen or subject hereunder forms a part of the territory of any one of the following nations: Germany, Austria, or Hungary, shall be deemed to be a citizen or subject of such nation. And the receipt of the said owner or of the person by whom said money or other property was conveyed, transferred, assigned, delivered, or paid over to the Alien Property Custodian shall be a full acquittance and discharge of the Alien Property Custodian or the Treasurer of the United States, as the case may be, and of the United States in respect to all claims of all persons heretofore or hereafter claiming any right, title, or interest in said money or other property, or compensation or damages arising from the capture of such money or other property by the President or the Alien Property Custodian: *Provided further, however,* That except as herein provided no such action by the President shall bar any person from the prosecution of any suit at law or in equity to establish any right, title, or interest which he may have therein.

“(c) Any person whose money or other property the President is authorized to return under the provisions of subsection (b) hereof may file notice of claim for the return of such money or other property, as provided in

subsection (a) hereof, and thereafter may make application to the President for allowance of such claim and/or may institute suit in equity to recover such money or other property, as provided in said subsection, and with like effect. The President or the court, as the case may be, may make the same determinations with respect to citizenship and other relevant facts that the President is authorized to make under the provisions of subsection (b) hereof.

“(d) Whenever a person, deceased, would have been entitled, if living, to the return of his money or other property hereunder, then his legal representatives may proceed for the return of such money or other property as provided in subsection (a) hereof: *Provided*, however, That the President or the Court, as the case may be, before granting such relief shall impose such conditions by way of security or otherwise, as the President or the court, respectively, shall deem sufficient to insure that such legal representative will redeliver to the Alien Property Custodian such portion of the money or other property so received by him as shall be distributable to any person not eligible as a claimant under subsections (a) or (c) hereof.

“(e) No money or other property shall be returned nor any debt allowed under this section to any person who is a citizen or subject of any nation which was associated with the United States in the prosecution of the war, unless such nation in like case extends reciprocal rights to citizens of the United States; nor in any event shall a debt be allowed under this section unless it was owing to and owned by the claimant prior to October 6, 1917, and as to claimants other than citizens of the United States unless it arose with reference to the money or other property held by the Alien Property Custodian or Treasurer of the United States hereunder.

“(f) Except as herein provided, the money or other property conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian, shall not be liable to lien, attachment, garnishment, trustee process, or execution, or subject to any order or decree of any court.

“(g) The legal representative (duly appointed by a court in the United States) of a person, deceased, whose money or other property has been conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian or seized by him hereunder and held by him or by the Treasurer of the United States, may (if not entitled to proceed under subsection (d) of this section) proceed under subsection (a) for the recovery of any interest, right, or title in any such money or other property which has, by reason of the death of such person, become the interest, right, or title of a citizen of the United States, unless such citizenship was acquired through naturalization proceedings in which the declaration of intention was filed after November 11, 1918. Such legal representative shall give a bond, in a penal sum and with sureties satisfactory to the President or the court, as the case may be, conditioned that he will redeliver to the Alien Property Custodian all such money or other property not distributed to such citizen, or, if deceased, to his heirs or legal representatives.

“(h) The aggregate value of the money or other property returned under paragraphs (9) and (10) of subsection (b) to any one person, irrespective of the number of trusts involved, shall in no case exceed \$10,000.

“(i) For the purposes of paragraphs (9) and (10) of subsection (b) of this section accumulated net income, dividends, interest, annuities, and other earnings, shall be considered as part of the principal.

“(j) Subsection (g) and paragraphs (9) and (10) of subsection (b) of this section shall not apply to any patent, trade-mark, print, label, copyright, or right therein or claim thereto, conveyed, transferred, assigned, or delivered to the Alien Property Custodian, or seized by him, or to the proceeds received from the sale, license, or other disposition of any such patent, trade-mark, print, label, copyright, or right therein or claim thereto; but the Alien Property Custodian is authorized and directed to return to the person entitled thereto, whether or not an enemy or ally of enemy and regardless of the value, any patent, trade-mark, print, label, copyright, or right

therein or claim thereto, which has been conveyed, transferred, assigned, or delivered to the Alien Property Custodian, or seized by him, and which (1) has not been sold, licensed, or otherwise disposed of under the provisions of this Act, and (2) is not involved (at the time this subsection takes effect) in litigation in which the United States, or any agency thereof, is a party.

“(k) This section shall not apply, however, to money paid to the Alien Property Custodian under section 10 hereof.” • • •

Approved, March 4, 1923.

FILED
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WM. R. STANSBURY
CLERK

Supreme Court of the United States,

OCTOBER TERM, 1924, No. 343.

BEHN, MEYER & COMPANY, LIMITED,

Appellant,

v.

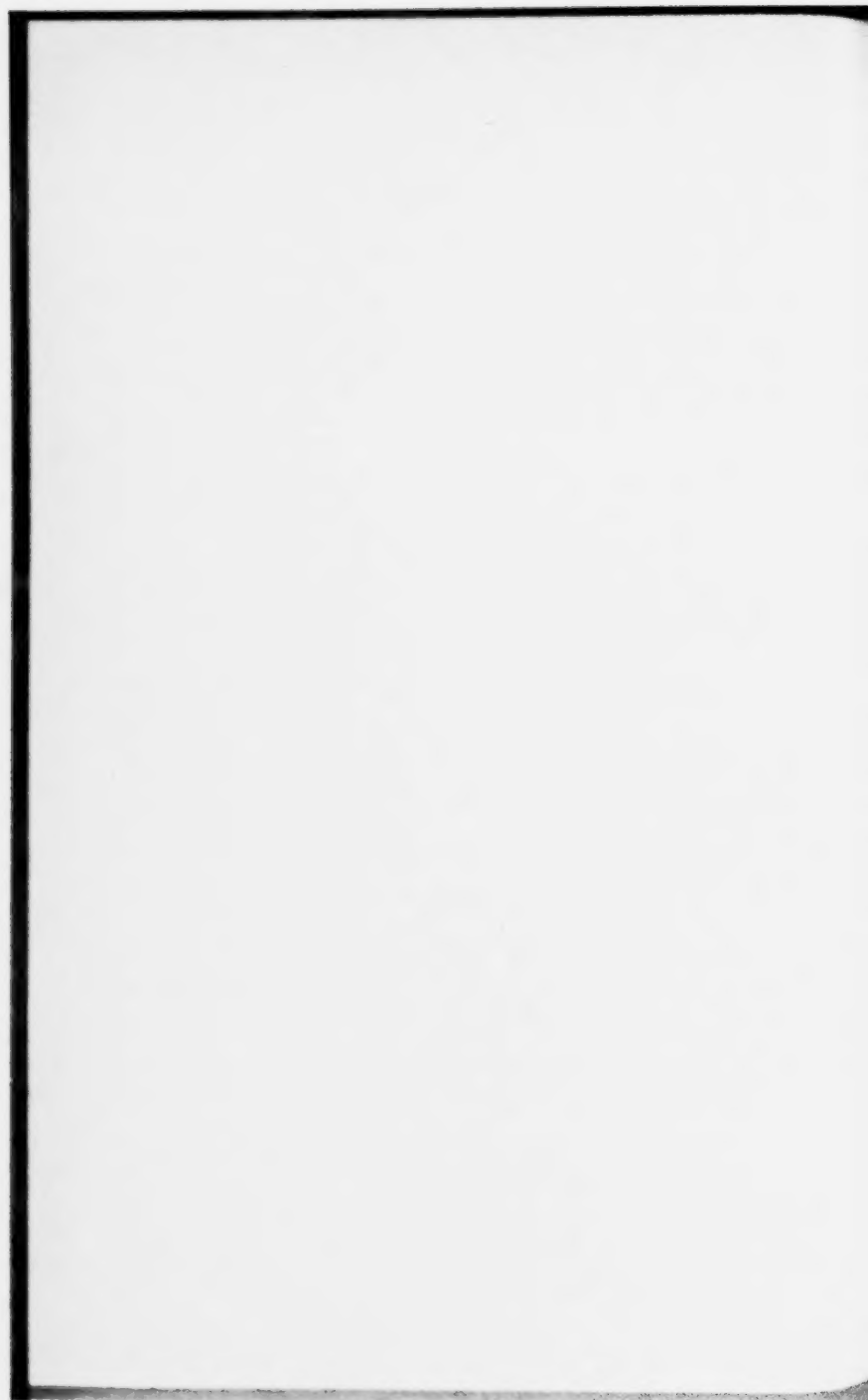
THOMAS W. MILLER, as Alien Property Custodian, and FRANK
WHITE, as Treasurer of the United States,

Appellees.

ANSWER OF BEHN, MEYER & COMPANY, LIMITED,
TO APPLICATION OF LAZARUS G. JOSEPH, AS
ALLEGED RECEIVER, FOR LEAVE TO IN-
TERVENE AND BE SUBSTITUTED
AS PLAINTIFF HEREIN.

WILLIAM D. GUTHRIE,
ISIDOR J. KRESEL,
BERNARD HERSHKOPF,

Of Counsel for Plaintiff-Appellant.



Supreme Court of the United States

OCTOBER TERM, 1924, No. 343.

BEHN, MEYER & COMPANY, Limited,
Appellant,

v.

THOMAS W. MILLER, as Alien Property Custodian, and
FRANK WHITE, as Treasurer of the United States,
Appellees.

ANSWER OF BEHN, MEYER & COMPANY, LIMITED, TO APPLI-
CATION OF LAZARUS G. JOSEPH, AS ALLEGED RECEIVER,
FOR LEAVE TO INTERVENE AND BE SUBSTITUTED
AS PLAINTIFF HEREIN.

Behn, Meyer & Company, Limited, the plaintiff and appellant in the above entitled cause, answering the application of Lazarus G. Joseph, as alleged receiver, for leave to intervene herein and be substituted in its place and stead as such plaintiff, respectfully shows unto this Honorable Court as follows:

That the alleged receivership was at all times null and void and has been duly vacated and set aside by the courts in the Philippine Islands, as fully appears by the facts stated below.

I. Behn, Meyer & Company, Limited, was incorporated in the British Straits Settlements in 1905. It duly secured permission to do business in the Philippine Islands as a foreign corporation and operated several branches there, and it was thus engaged in business in the Philippine Islands when war broke out between the United States and Germany in April, 1917.

II. On October 6, 1917, the President approved the Act of Congress known as the Trading with the Enemy Act (c. 106, 40 Stat. 411). In and by section 7-c thereof, it was made the duty of any person holding property which the President determined to be enemy-owned to surrender the same to the Alien Property Custodian if the President so required. In and by an Executive Order dated October 12, 1917, paragraph XXIX thereof, the President, as authorized by section 5 of said Act, vested in the Alien Property Custodian the powers conferred upon him in section 7-c of said Act. In the Philippine Islands the Alien Property Custodian was represented by a Managing Director. Concerning that official, the following is stated in the report of February 22, 1919, made by Hon. A. Mitchell Palmer, Alien Property Custodian, to the President under section 6 of the Trading with the Enemy Act, viz. (pp. 168, 169):

“In each of these [insular possessions of the United States] there has been appointed a representative of the Alien Property Custodian, who, in the Philippine Islands, is known as managing director, and who has, in that instance, by virtue of authority from the President, the right to make demands and issue acquittances in the name of the Alien Property Custodian. . . .

"In the Philippine Islands, Hon. Francis Burton Harrison, Governor General of the Philippines, was the special representative and managing director and was appointed director by the President to carry out certain portions of the trading-with-the-enemy act under the supervision of the Alien Property Custodian. Governor General Harrison was succeeded by Mr. Douglas M. Moffat, of New York, who was sent out especially to administer the office of Alien Property Custodian in Manila."

III. In February, 1918, while Governor General Harrison was the Managing Director for the Philippine Islands as aforesaid, and acting on behalf of the Hon. A. Mitchell Palmer, Alien Property Custodian, the said Harrison took possession of all the property and business of Behn, Meyer & Company, Limited, on the alleged ground that it was enemy-owned. On February 16, 1918, as Managing Director for the Alien Property Custodian, he wrote Behn, Meyer & Company, Limited, that Mr. W. D. Pemberton had been appointed by him "receiver" (plainly employing the term in the sense of depository, supervisor, custodian, or manager) of Behn, Meyer & Company, Limited, and would assume charge of the business and assets of said firm. This demand was delivered to the Philippine manager of Behn, Meyer & Company, Limited, J. M. Menzi, who acquiesced in and complied therewith.

IV. In order to facilitate the carrying on and liquidation of the business of Behn, Meyer & Company, Limited, by the Alien Property Custodian, the War Trade Board on March 19, 1918, issued a license to Behn, Meyer & Company, Limited, "to perform such acts as may be

necessary to continue the business of said Behn, Meyer & Co., Ltd., or in the alternative, to perform such acts as may be necessary for a complete sale, liquidation and disposition of the business, assets and property of the said Behn, Meyer & Co., Ltd., according as it may seem advisable to the Alien Property Custodian that the business of Behn, Meyer & Co., Ltd., should continue or should be liquidated, sold and disposed of." The license further provided that—

"(1) All acts performed hereunder shall be carried out under the direction and supervision of the Alien Property Custodian, and in accordance with such plan and method as may be desired by the Alien Property Custodian. . . .

"(2) The licensee shall transfer to the Alien Property Custodian as the said Alien Property Custodian may require, the proceeds of any liquidation, sale and disposition, which may occur as aforementioned. . . ."

V. The property of Behn, Meyer & Company, Limited, in the Philippines was thereupon liquidated by and under the direction of the Managing Director of the Alien Property Custodian through said Pemberton and said Menzi. Menzi, as Philippine manager of Behn, Meyer & Company, Limited, held a power of attorney from it; and, at the direction of the Managing Director of the Alien Property Custodian, acted thereunder in aid of said liquidation. On December 12, 1921, the Bureau of Law of the Alien Property Custodian at Washington wrote one of the counsel for Behn, Meyer & Company, Limited, in part as follows:

"You are further advised that under Report 50426, dated February 19th, 1919, W. W. Pemberton, as Receiver for Behn, Meyer & Company, Ltd., reported cash balance of proceeds of the liquidation of the assets of the above mentioned firm located in the Philippine Islands, amounting to 392,674.96 pesos. On this report there was a demand dated February 21st, 1919, service accepted by W. W. Pemberton, Receiver, of the date of February 21, 1919. Under this demand, Behn, Meyer & Company, Ltd., was determined to be an enemy. Under this report there was an accounting to the Alien Property Custodian for \$196,-337.48 representing the exchange value or equivalent of the amount demanded.

"Under Report 50422, Trust 50238, made by Mr. Pemberton as receiver, covering balance in his hands in further adjustment of his accounts in liquidation of Behn, Meyer & Company, Ltd., there was a demand dated January 29th, 1919, service accepted January 29th, 1919, in which Behn, Meyer & Company, Ltd., is determined to be an enemy and an accounting made to this office for \$65,320 as representing the exchange value or equivalent of the sum reported."

VI. The aforesaid liquidation, begun under Governor General Harrison as Managing Director of the Alien Property Custodian, was concluded in the early part of 1919 under Douglas M. Moffat as his successor as such Managing Director. Thus, for example, the accounts receivable of the company were disposed of by Menzi in January, 1919, at the express direction of said Moffat as Managing Director and under Menzi's said power of attorney as manager of Behn, Meyer & Company, Limited, as well as pursuant to the said War Trade Board license. The bill of sale has the following notation thereon, viz.:

"Approved, A. Mitchell Palmer, Alien Property Custodian, By Douglas M. Moffat, Managing Director for the Philippine Islands."

VII. In the report of February 22, 1919, made to the President by Hon. A. Mitchell Palmer, as Alien Property Custodian, under section 6 of the Trading with the Enemy Act, and by the President submitted to Congress on March 1, 1919 (Congressional Record, 65th Congress, 3rd session, Mar. 1, 1919, vol. 57, No. 81, p. 4880), the following appears in respect of the liquidation of enemy property in the Philippines (p. 172):

"The principal German houses [in the Philippines] with their approximate capitalization follow:

• • • •

"Behn Meyer & Co. (Ltd.).....\$700,000
• • • •

"When the Alien Property Custodian was about to take over these concerns, and thus eliminate from the industrial life of the Philippines this strong German hold by an immediate liquidation of the enemy interests, he found that it was unwise to so liquidate immediately . . . Under these circumstances he installed supervisors and the companies continued in business as going concerns until after the amendment to the trading with the enemy act, which authorized the Alien Property Custodian to sell the enemy interests; whereupon the companies were either liquidated under existing licenses of the War Trade Board, with an accounting to the Alien Property Custodian of the proceeds, or the enemy interest held by the Alien Property Custodian was sold at public auction."

In view of the foregoing, it should be evident that it is incorrect to assert, as do the papers now submitted in

support of the present application, that the Alien Property Custodian did not authorize and subsequently disapproved what had been done in the Philippines in reference to the seizure and liquidation of the property of Behn, Meyer & Company, Limited (see paragraph 7 of the so-called "amended complaint").

VIII. In said report of the Alien Property Custodian, at pages 538 to 542, inclusive, the court will find Executive Orders, procured at the instance or request of the Alien Property Custodian, disapproving and setting aside various acts of his Managing Director in the Philippine Islands; but among these, it will be observed, there is none which affects or in any wise concerns the seizure or liquidation of the property of Behn, Meyer & Company, Limited.

IX. The said liquidation was completed, the business of Behn, Meyer & Company, Limited, in the Philippines in all respects terminated, and the proceeds of the liquidation sent in 1919 from the Philippine Islands to the Treasurer of the United States at Washington, by or on behalf of the Managing Director of the Alien Property Custodian in the Philippines. The Alien Property Custodian, in his aforesaid report to the President of February 22, 1919, referring to the sale and liquidation of a number of alleged enemy-owned businesses in the Philippines and, among others, Behn, Meyer & Company, Limited, stated (p. 172) that "the money realized from the sales of these properties has been turned into the Treasury of the United States."

X. The court will further note that, in 1919, three years before the alleged receivership of Lazarus G. Joseph is even claimed to have begun, (1) there was no longer any property of Behn, Meyer & Company, Limited, in the Philippine Islands, (2) the corporation was no longer carrying on any business there, (3) its right to do so had been taken away and destroyed by the Governor General and the Alien Property Custodian, and (4) the limited right to do business, previously accorded to it under license of the War Trade Board, had terminated and expired, inasmuch as it had been granted solely for the purpose of enabling the Alien Property Custodian to liquidate the business, and such liquidation had then been completed and accomplished.

XI. Notwithstanding the fact that Behn, Meyer & Company, Limited, was not a corporation of the Philippine Islands and had no property and did no business there in August, 1922, the present application impliedly asserts that the Court of First Instance of Manila in the Philippine Islands had power and authority on August 10, 1922, to appoint a receiver for it or its property. It is submitted that it is settled law that a court has no jurisdiction to appoint a receiver of a foreign corporation as receiver of the corporation itself, nor in any case where the foreign corporation has no property within the jurisdiction of the court. (See *Corpus Juris*, vol. 14 a, pp. 1334-8, for a collation of authorities.)

XII. In February, 1922, A. N. Jureidini & Brothers, a British concern doing business in the Philippine Islands, recovered a judgment for 3,488 pesos, or about

\$1,744, against Behn, Meyer & Company, Limited. Thereupon, instead of attempting to enforce the exclusive remedy provided by section 9 of the Trading with the Enemy Act for those claiming to be creditors of one whose property had been demanded by and was in the hands of the Alien Property Custodian, A. N. Jureidini & Brothers caused execution to be issued on said judgment and when it was thereafter returned unsatisfied, obviously because Behn, Meyer & Company, Limited, had no property in the Philippines since the seizure and liquidation by the Alien Property Custodian as aforesaid, A. N. Jureidini & Brothers applied for a receiver, and on August 10, 1922, an order was made purporting to appoint the applicant in the case at bar, Lazarus G. Joseph, as such alleged receiver.

XIII. Section 9-a of the Trading with the Enemy Act as amended June 5, 1920 (c. 241, 41 Stat. 977), provided that any person not an enemy or ally of enemy who claimed that a debt was due him from one whose property had been taken by the Alien Property Custodian could file a claim for the payment of the debt with the Alien Property Custodian or sue the Alien Property Custodian or Treasurer of the United States therefor. Section 9-e provided as follows:

"No money or other property shall be returned nor any debt allowed under this section [that is, section 9 in all its various subdivisions] to any person who is a citizen or subject of any nation which was associated with the United States in the prosecution of the war, unless such nation in like case extends reciprocal rights to citizens of the United States; nor in any event shall a debt

be allowed under this section unless it was owing to and owned by the claimant prior to October 6, 1917, and as to claimants other than citizens of the United States unless it arose with reference to the money or other property held by the Alien Property Custodian or Treasurer of the United States hereunder."

XIV. A. N. Jureidini & Brothers could not in 1922 and cannot now comply with the provisions of section 9-e, because the debt in question did not arise with reference to the money or property held by the Alien Property Custodian or Treasurer of the United States. It is submitted that to permit A. N. Jureidini & Brothers, and other similarly situated, to effect recoveries through the medium of an alleged receivership such as is now before the court, would clearly tend to permit an evasion of the Trading with the Enemy Act.

XV. In 1922 section 9-f of the Trading with the Enemy Act provided, and still provides, as follows:

"Except as herein provided, the money or other property conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian, shall not be liable to lien, attachment, garnishment, trustee process, or execution, or subject to any order or decree of any court."

Notwithstanding this express prohibition of an Act of Congress, A. N. Jureidini & Brothers sought and obtained from a court an order of receivership which, it is now insisted by the applicant, the alleged receiver, applies to and encumbers the money or property held by the Alien Property Custodian. It should be pointed out here, as the Court of First Instance at Manila itself subsequently did in its opinion of September 26, 1923 (Exhibit A hereto), that—

"At the time when there was issued the order appointing a depositary or receiver in this case, the attention of the court was not called to the fact that the properties belonging to the plaintiffs herein [*i. e.*, Behn, Meyer & Company, Limited] had been sold at a prior date by the Alien Property Custodian to John Bordman. Had the attention of the court been called to such a circumstance, said order would not have been made, especially if it were shown that said properties had been sold long before the rendering of the judgment in favor of Messrs. A. N. Jureidini & Bros."

It follows, therefore, that said alleged receivership was in violation of the Trading with the Enemy Act and void *ab initio*.

XVI. After his appointment as receiver as aforesaid, the said Joseph undertook the prosecution of certain actions and proceedings in his capacity as said alleged receiver. Among others, he undertook certain proceedings in an action by Behn, Meyer & Company, Limited, against J. S. Stanley and others. In this action the said Joseph moved to compel J. M. Menzi to deliver to him the books of Behn, Meyer & Company, Limited, which said Menzi held for account of one John Bordman who had purchased them. Thereupon the said Menzi moved that the petition of Joseph be rejected; and Menzi, Bordman and the Bank of the Philippine Islands further moved for leave to intervene in the action for the purpose of setting aside the alleged receivership under the pretended authority of which the said Joseph was thus attempting to proceed against them. Section 121 of the Philippine Code of Civil Procedure (Act No. 190, enacted August 7, 1901) provides in part that—

"A person may, at any period of a trial, upon motion, be permitted by the court to intervene in an action or proceeding, if he has a legal interest in the matter in litigation, or in the success of either of the parties, or an interest against both. Such intervening party may be permitted . . . to unite with the defendant in resisting the claims of the plaintiff, or to demand anything adverse to both plaintiff and defendant."

XVII. These motions thereafter duly came on for hearing in Division III of the Court of First Instance of Manila and were decided by the court on September 26, 1923. The court thereupon duly granted the said Menzi, Bordman and the Bank of the Philippine Islands leave to intervene as prayed and duly declared the alleged receivership of the said Joseph to be null and void and set it aside. A translation of its opinion and judgment is hereunto annexed, made a part hereof and marked Exhibit A. The concluding paragraph thereof reads as follows:

"Now therefore it is resolved to allow such parties [*i. e.*, the said Menzi, Bordman and Bank of the Philippine Islands], as they are hereby allowed and authorized, to intervene in this case; and whereas the court has come to the conclusion that the court has or had no jurisdiction to appoint a judicial depositary or receiver due to the fact that all the properties of the aforementioned plaintiffs [*i. e.*, Behn, Meyer & Company, Limited] have been sold by the Alien Property Custodian pursuant to the law of Congress referred to above, now therefore it is resolved likewise to set aside and quash, as the same is hereby set aside and quashed, the order of the court of August 10, 1922, appointing as judicial depositary or receiver Lazarus G. Joseph. Let the bond given by said depositary or receiver for the faithful discharge

of his duty be released; and it is hereby declared that J. M. Menzi is not bound to deliver to the aforementioned Lazarus G. Joseph the books of which he is now in possession, which books were formerly the property of the plaintiffs, Messrs. Behn, Meyer & Co., Ltd."

XVIII. Thereafter and on October 3, 1923, the said Joseph moved for a reconsideration of the order made by the Court of First Instance of Manila on September 26, 1923. The grounds of this motion were: (1) that the Alien Property Custodian had not validly or at all disposed of the property of Behn, Meyer & Company, Limited, and (2) that the Alien Property Custodian could not lawfully have taken such action, (a) because the company had never been validly determined to be an "enemy" under the Trading with the Enemy Act, and (b) because there had not been a proper demand by the Alien Property Custodian since the company had a license to do business from the War Trade Board. The facts in these respects have been stated above. The Court of First Instance of Manila found the application to be without any basis in law or fact, rejected the motion and reaffirmed its prior ruling in an opinion and judgment dated December 3, 1923. A translation thereof is hereunto annexed, made a part hereof and marked Exhibit B.

XIX. Pretending to be receiver of Behn, Meyer & Company, Limited, as aforesaid, the said Joseph as such also brought suit against the Hamburg Amerika Line in the Philippine courts and was defeated. He thereupon appealed to the Supreme Court of the Philippine Islands, and was again defeated, that court holding that he had

no standing to maintain the action inasmuch as he was not in law or fact receiver of Behn, Meyer & Company, Limited, and that his alleged receivership was null and void.

XX. On November 4, 1924, the Clerk of the Supreme Court of the Philippine Islands sent to the New York counsel for Behn, Meyer & Company, Limited, the following cablegram in reference to the said appeal of Lazarus G. Joseph as said alleged receiver in the said Hamburg Amerika case, viz.:

"THIS SUPREME COURT DECIDES CASE LAZARUS G. JOSEPH AS RECEIVER OF BEHN MEYER AND COMPANY LIMITED VERSUS HAMBURG AMERIKA LINE AS FOLLOWS STOP THERE ARE TWO QUESTIONS FOR THIS COURT TO DECIDE IN THIS APPEAL FIRST HAS THE PLAINTIFF LAZARUS JOSEPH AS RECEIVER OF BEHN MEYER AND COMPANY JURIDICAL PERSONALITY TO INSTITUTE THIS ACTION AND PROSECUTE THE APPEAL STOP SECOND AND HAS THE JUDGMENT FOR PESOS 16655 CENTAVOS 53 RENDERED IN CIVIL CASE NUMBERED 14819 BY THE COURT OF FIRST INSTANCE OF MANILA IN FAVOR OF BEHN MEYER AND COMPANY AND AGAINST THE HAMBURG AMERIKA LINE BEEN PAID STOP UPON THE FIRST QUESTION THE COURT HOLDS THAT THE PROPERTY OF BEHN MEYER AND COMPANY HAVING BEEN SOLD TO JOHN BORDMAN IT HAD CEASED TO EXIST AND THERE COULD BE NO RECEIVER APPOINTED AND THE APPOINTMENT OF JOSEPH WAS NULL AND VOID STOP UPON THE SECOND QUESTION THE COURT HOLDS THAT BEHN MEYER AND COMPANY PAID ITSELF THE AMOUNT OF THE JUDGMENT SUED ON FROM FUNDS IN ITS HANDS BELONGING TO THE HAMBURG AMERIKA LINE PRIOR TO THE SALE OF BEHN MEYER AND COMPANY TO BORDMAN STOP THE CASE IS DISMISSED THE MOTION FOR REHEARING BY JOSEPH WAS ALSO DENIED

V ALBERT CLERK SUPREME COURT PHILIPPINE ISLANDS."

The said appeal was decided in favor of the Hamburg Amerika Line on September 16, 1924; and the said motion of the said Joseph as alleged receiver for a rehearing thereof was denied November 3, 1924.

XXI. For the foregoing reasons it is submitted that the applicant Joseph is not now and never was the lawful receiver of Behn, Meyer & Company, Limited, or of any of its property, and that any color or semblance of authority as such which may have inhered in him by virtue of the said order of August 10, 1922, purporting to appoint him as such, has likewise been annulled by the subsequent adjudications of the Philippine courts, including the highest court. Exhibits A and B hereto make it plain that the court which originally attempted to appoint him receiver has since declared said appointment to have been (1) improvidently made as a result of a failure to disclose to it essential matters of fact, and (2) null and void because in violation of an Act of Congress. For these serious reasons, the court removed the said Joseph as its officer or receiver.

XXII. Nevertheless, it is now contended by the applicant in his moving papers that the mere fact that he has filed a bill of exceptions and taken an appeal to the Supreme Court of the Philippine Islands from the orders vacating his alleged receivership operates to continue and reinstate him as such receiver until the final determination of his appeal, notwithstanding the force and effect of the orders or decrees, Exhibits A and B hereto, wherein the court which appointed him has refused him any recognition as such.

XXIII. The moving papers set forth no support for any such contention, and it is submitted that it is not the law of the Philippine Islands. In *Watson & Co. v. Enriquez et al.*, 1 Philippine Reports 480, a similar contention was overruled. In that case a preliminary injunction had been obtained. After hearing, it was vacated. Thereupon a bill of exceptions was filed and an appeal to the Supreme Court taken. It was argued that as section 144 of the Philippine Code of Civil Procedure (Act. No. 190, enacted Aug. 7, 1901) provided in part that "the filing of a bill of exceptions shall of itself stay execution until final determination of the action, unless for special reasons stated in the bill of exceptions the court shall order that execution be not stayed, in which event execution shall issue at once", and as the order of the lower court allowing the bill of exceptions was silent upon the subject, the filing of the bill of exceptions and the taking of the appeal operated to continue or reinstate the injunction, despite the decree of the Court of First Instance to the contrary. The Supreme Court of the Philippines, however, ruled otherwise. As stated in the syllabus of the report cited above, the Supreme Court of the Philippine Islands held that "the filing of a bill of exceptions on appeal does not revive a preliminary injunction which has been dissolved by the lower court." In that respect the decision is the same as that of this court in like cases. *Slaughter House Cases*, 10 Wall. 273, 297; *Hovey v. McDonald*, 109 U. S. 150, 159-62; *Leonard v. Ozark Land Co.*, 115 U. S. 465.

XXIV. The reasoning of the Supreme Court of the Philippine Islands in the *Watson* case (*supra*) should make it plain that section 144 of the Code of Civil Procedure does not apply in cases where an injunction is dissolved or a receivership set aside. The appropriate function of that enactment is limited to cases where the appeal operates, for example, as a *supersedeas* against the execution of a money judgment. Where, however, a receivership is vacated, that is to say, where a court removes its own official whom it had improvidently appointed without right or jurisdiction, the intrinsic force of the decree, regardless of whether execution issue thereon or not, is such that a due regard for the rights of the court below and for the decent administration of justice should deny to the alleged receiver the power to nullify the deliberate judgment of the court below, even temporarily, by the mere filing of a bill of exceptions. Particularly should that be so where, as here, it appears that the appeal is manifestly without reasonable prospect of success, not only because without merit as the foregoing makes plain, but because of the refusal of the appellate court itself to recognize the said Joseph as receiver of Behn, Meyer & Company, Limited, in his appeal against the judgment in the *Hamburg Amerika Line* case, referred to above. In other words, it is the applicant's contention that he is still the lawful receiver of Behn, Meyer & Company, Limited, in the Philippine Islands, merely because he has taken an appeal to the Supreme Court of the Philippine Islands, notwithstanding (1) the fact that the lower court which appointed

him has removed him and twice declared his alleged receivership to have been improvident and void, and (2) the fact that the very court to which he has now appealed has already twice determined in his case against the Hamburg Amerika Line that his alleged receivership of Behn, Meyer & Company, Limited, was an utter nullity from the beginning.

XXV. The application of the said Joseph herein is to be substituted as plaintiff. To that end, he even submits with his papers an amended bill of complaint. In other words, the alleged receiver in effect desires to sue in the District of Columbia. It is submitted that, in any event, he has and can have no authority adequate to such a purpose. In section 176 of the Philippine Code of Civil Procedure (Act No. 190, enacted Aug. 7, 1901) it is declared that, under certain circumstances the court may appoint "a receiver to take charge of its [i. e., the corporation's] estate and effects, and to collect the debts and property due and belonging to the corporation, and to pay the outstanding debts thereof, and to divide the money and other properties that shall remain over among the stockholders or members." But it is nowhere provided that the receiver shall be vested with title to the corporate property. A Philippine receiver is, in effect, only a chancery receiver; at the most he takes possession of the property of a corporation and not title. (See *Whalen v. Pasig Iron Works*, 13 Philippine Reports 417, 423, following *Chicago Union Bank v. Kansas City Bank*, 136 U. S. 223, 236.)

XXVI. Assuming, therefore, that the receivership herein in question were in all respects valid and still in force, and that section 176 of the Code of Civil Procedure of the Philippine Islands is applicable to foreign corporations, it is, nevertheless, clear that, under the settled law of this court, the said receiver would have no authority to sue in the District of Columbia or in this court to recover demands or property situated here. So this court held in a far clearer case and under much stronger statutes than the alleged receiver can call to his aid in the case at bar. *Sterrett v. Second National Bank*, 248 U. S. 73.

XXVII. A receiver is, of course, only the arm of the court which appointed him, and it is well established law that he may not bring suits in the courts of other jurisdictions unless the appointing court authorizes him so to do (34 Cyc. 377-8). In the *Sterrett* case, *supra*, the receiver had express authority from the Alabama chancery court to sue in the United States District Court in Ohio (248 U. S. at p. 75), but, nevertheless, this court held that he was without authority to sue in the said federal court. In the case at bar the alleged receiver is without even the color of authority from any Philippine court to sue in the United States, or in the District of Columbia, or anywhere. Indeed, so far from being authorized by the Philippine court to sue, his entire authority to act for it in any respect, or to hold himself out as its representative for any purpose, has been deliberately withdrawn and destroyed by it.

XXVIII. It is submitted that, in any case, the alleged receiver has and can have no standing in this or any other court of the United States.

That the suit in the case at bar was duly brought by Behn, Meyer & Company, Limited, and is being maintained by it and its attorneys in fact and at law under due authority therefrom.

XXIX. It is not true that the British authorities have either dissolved the corporation of Behn, Meyer & Company, Limited, or taken over the corporation itself as such. The allegations to the contrary in the moving papers herein are unfounded. All that the British authorities in fact did was to take over some of the assets or property of the company in the Straits Settlements. On October 9, 1923, the Controller of the Local Clearing Office (Enemy Debts) of the Treasury at Singapore, British Straits Settlements, wrote as follows in this respect, viz.:

“Under emergency local legislation only the business carried on by Messrs. Behn, Meyer & Co., Ltd., in the Colony was wound up and not Behn, Meyer & Co., Ltd., as a whole. Moreover, it was not possible to wind up the business of the branches of the firm in foreign countries as local law had no jurisdiction over them.”

The British authorities have not assumed control of the corporation, or superseded its directors and officers in any way, or put in any new directors or officers.

XXX. After the Philippine branches of Behn, Meyer & Company, Limited, were taken over by the Alien Property Custodian of the United States, as

aforesaid, some of the stockholders of the corporation transferred their shares, so that in December, 1921, all of the stock of the said company (i.e., 10,000 preferred shares and 20,000 ordinary shares, each of a par value of \$100 British Straits Settlements currency) had become and was the property of Ed. L. Lorenz-Meyer, Ad. Laspe and F. H. Witthoefft.

XXXI. Thereafter and on December 13, 1921, there was duly held an extraordinary general meeting of shareholders of Behn, Meyer & Company, Limited, at which all of the stockholders of the company were present and waived notice. At the said meeting Messrs. Emil Martens of New York; Karl Auer of Amsterdam, Holland; Werner Engler of St. Gall, Switzerland, and O. M. H. Sieleken and R. Schubert of Hamburg, were unanimously elected the directors of the company. At said meeting also Messrs. E. L. Lorenz-Meyer, Ad. Laspe and F. H. Witthoefft were unanimously reelected the members of the consulting committee of the company, a committee having supervisory authority over the corporation and its officers.

XXXII. At said meeting of shareholders it was further resolved that—

“A claim shall be filed with the Alien Property Custodian of the United States for the assets and all avails thereof of the Philippine branches of Behn, Meyer & Co., Limited, and a suit or suits if necessary to enforce such claim, shall be instituted and prosecuted by retaining Messrs. Jerome, Rand & Kresel of New York as attorneys for the company for the purpose”; that “authority be given to the board of directors or one or more members

thereof, to take any and all action or steps necessary or proper in the premises", and that "Mr. Emil Martens of New York be appointed as attorney for the company and a power of attorney for the purpose be executed."

XXXIII. On December 13, 1921, there was a meeting of directors of Behn, Meyer & Company, Limited. It was resolved thereat that—

"In accordance with the resolutions passed at the extraordinary general meeting of shareholders notice of claim against the Alien Property Custodian at Washington be filed and a suit or suits to enforce the same be instituted and Messrs. Jerome, Rand & Kresel be retained for the purpose; further that Mr. O. M. H. Sielcken be authorized to execute any necessary instruments; further that Mr. Emil Martens of New York be appointed as attorney of this company and that the execution of the power of attorney by Mr. O. M. H. Sielcken be sanctioned."

XXXIV. On December 13, 1921, there was a meeting of the consulting committee of Behn, Meyer & Company, Limited, at which all the members thereof were present. The minutes of the extraordinary general meeting of shareholders and of the directors, referred to above, were both laid before the members of the consulting committee and all of the resolutions passed in both meetings were unanimously approved and confirmed. The consulting committee, under the articles of association of Behn, Meyer & Company, Limited, is the supreme corporate authority. It is provided in its said articles of association that—

"The Consulting Committee shall have power from time to time . . . to issue and give to the

Directors all such general or special directions with regard to the management of the Company's business or any matter connected therewith or incidental thereto, and not inconsistent or contrary to the Ordinance [i.e., The Companies Ordinance, 1889, of the Straits Settlements], as they may think fit, and all such directions shall be implicitly carried into effect and obeyed by the Directors forthwith or within such time as shall be limited by the Consulting Committee or in default of limitation as shall be reasonable under the circumstances;" and further that—

"The Office of Director shall be vacated if he refuses or neglects to carry out or comply with any general or special directions given or issued by the Consulting Committee."

XXXV. Thereafter and on December 14, 1921, Behn, Meyer & Company, Limited, duly designated and appointed the aforementioned Emil W. Martens of New York its agent and attorney-in-fact in and by a power of attorney, a copy whereof is hereto annexed, made part hereof and marked Exhibit C. The said power of attorney was duly executed on behalf of the company by all the members of its consulting committee and by the said O. M. H. Sielcken as director, pursuant to the corporate action hereinbefore set forth. A duplicate of the said power of attorney was heretofore filed with the Alien Property Custodian on or about January 16, 1922. Said power of attorney grants to the said Martens all the power and authority necessary to the prosecution and maintenance of the suit now before this court upon appeal. Among other things, the said power of attorney authorizes the said Martens "to institute in its [i. e., Behn, Meyer & Company, Limited's] name such suit or

suits in equity to establish the interest, right, title or debt so claimed [by the said company], as may be allowed by law."

XXXVI. Thereafter and on December 15, 1921, Behn, Meyer & Company, Limited, by its said director, O. M. H. Sieleken, thereto duly authorized in and by the corporate proceedings above referred to, duly executed and delivered to Messrs. Jerome, Rand & Kresel, a firm of attorneys-at-law in the city of New York, a letter of retainer reading in part as follows:

"We hereby retain you as our attorneys in the matter of prosecuting and enforcing the claim of Behn, Meyer & Company, Limited, against the Alien Property Custodian and the Treasurer of the United States for moneys representing the proceeds of the assets of the Philippine Branches of Behn, Meyer & Company, Limited, heretofore seized and/or liquidated by the Governmental authorities of the United States. We hereby authorize you to take all such steps and proceedings and bring all suits that may be in your opinion necessary or proper in the premises."

XXXVII. Pursuant to the requirements of section 9 of the Trading with the Enemy Act, Behn, Meyer & Company, Limited, under date of December 14, 1921, made and executed a notice of claim directed to the Alien Property Custodian for the proceeds of the liquidation of its Philippine branches as aforesaid. The said claim was duly executed and verified in its behalf by (1) the said director Sieleken, (2) the said director and attorney-in-fact Martens, and (3) all the members of the consult-

ing committee of the company above mentioned. The said notice of claim was thereafter and on or about January 16, 1922, duly filed with the Alien Property Custodian.

XXXVIII. On January 1, 1922, the aforesaid firm of Jerome, Rand & Kresel was reconstituted under the firm name and style of Guthrie, Jerome, Rand & Kresel; and on January 3, 1922, Behn, Meyer & Company, Limited, by its said director Sielcken, thereto duly authorized in and by the corporate proceedings above referred to, duly executed and delivered to said Messrs. Guthrie, Jerome, Rand & Kresel, lawyers of the city of New York, an additional letter of retainer reading in part as follows:

"We hereby retain you to represent us before any court, committee, commission, officer or other governmental agency, which may be authorized by any act of Congress or any officer of the Government of the United States, to pass upon or adjudicate claims to property and money in the hands of the Alien Property Custodian or the Treasurer of the United States, or both, including such a claim of Behn, Meyer & Company, Limited, to certain property and money in the hands of the Alien Property Custodian or the Treasurer of the United States, or both, which are the proceeds of the liquidation and sale of the branches of Behn, Meyer & Company, Limited, located in the Philippine Islands.

"This retainer is in addition to the retainer of Messrs. Jerome, Rand & Kresel, whose successors you are, dated the 15th day of December, 1921, and signed by Behn, Meyer & Company, Limited, by O. M. H. Sielcken, Director."

XXXIX. Thereafter and in or about June, 1922, Messrs. Guthrie, Jerome, Rand & Kresel, as attorneys

for Behn, Meyer & Company, Limited, retained Messrs. Howe, Swayze & Bradley, attorneys-at-law in the city of Washington, to act as local attorneys and attorneys of record for them and the said company, and thereafter caused the said last mentioned firm to file the bill of complaint in the case at bar in the Supreme Court of the District of Columbia. The said bill of complaint herein was duly verified on July 27, 1922, by the said Emil W. Martens as a director of Behn, Meyer & Company, Limited, and as its attorney-in-fact under the power of attorney whereof Exhibit C hereto is a copy. In the proceedings subsequently had on and in relation to the said bill of complaint, the plaintiff, Behn, Meyer & Company, Limited, has been represented by various members of the aforesaid firm of Guthrie, Jerome, Rand & Kresel, and by their local Washington attorneys, the members of the firm of Howe, Swayze & Bradley.

XL. For the foregoing reasons it is submitted that the suit in the case at bar was in all respects properly brought by the above-named plaintiff corporation and its aforesaid attorneys at law and in fact and is now being duly and properly prosecuted and maintained by them.

That the alleged receiver has been guilty of laches in making the application to intervene.

XLI. The order purporting to appoint the said Lazarus G. Joseph, receiver of Behn, Meyer & Company, Limited, was made on August 10, 1922, two years and three months ago. The receiver and his attorneys then knew that the proceeds of the company's property were in the

hands of the Alien Property Custodian and had then been in his hands more than three years. One of the attorneys for the receiver, Henry D. Green, had in 1919 been an attorney in the Division of Insular Possessions of the Alien Property Custodian's office, and as such was even then familiar with the liquidation of the Philippine branches of Behn, Meyer & Company, Limited. Nevertheless, the said alleged receiver has not, until now, attempted to bring any suit looking to the recovery of the company's property.

XLII. The said alleged receiver carried on the various litigations and proceedings in the Philippine Islands, above referred to, in part with funds borrowed from some of his attorneys herein, and with the help of their services. In January, 1924, therefore, he was indebted to them, but without any receivership funds wherewith to pay them. For the purpose of securing funds to pay themselves, the said alleged receiver and some of his said attorneys filed with the Alien Property Custodian a claim to \$10,000 of the moneys held for Behn, Meyer & Company, Limited. The said claim was filed pursuant to paragraph 10 of subsection b of section 9 of the Trading with the Enemy Act as amended March 4, 1923 (c. 285, 42 Stat. 1511), popularly known as the Winslow Act. The said paragraph authorizes the return of \$10,000 to a corporation whose property is in the hands of the Alien Property Custodian only if "it is not otherwise entitled to the return of its money or other property, or any part thereof, under this section." The manifest operation of this provision is to exclude any corporation which is en-

titled to the return of its property by the Alien Property Custodian under subsection a of section 9 as a "person not an enemy or ally of enemy."

XLIII. If the claim for \$10,000 had been allowed and paid to the attorneys for the alleged receiver, their act, if valid and authorized, would have been a concession that Behn, Meyer & Company, Limited, was an "enemy" under the Trading with the Enemy Act and not entitled to the return of its property under subsection a of section 9 as a "person not an enemy or ally of enemy." The truth was otherwise however, as is indeed apparent from the fact that the said alleged receiver's papers before this court on his present application themselves set forth that Behn, Meyer & Company, Limited, a British corporation not doing business in or with any enemy territory, was not an "enemy" as defined in the Trading with the Enemy Act and that the seizure and liquidation of its property by the Alien Property Custodian as such were illegal.

XLIV. In January, 1924, the said receiver's attorneys discovered that they could not secure the payment of \$10,000 out of the funds of Behn, Meyer & Company, Limited, in the hands of the Alien Property Custodian, because the company itself had theretofore and in 1922 sued to recover the funds so held and the said suit was still pending. Thereupon the said attorneys of the alleged receiver applied to the attorneys for Behn, Meyer & Company, Limited, for their consent that \$10,000 be paid to them by the Alien Property Custodian. That was the

first notice which the said attorneys for the plaintiff corporation herein had of the existence of the alleged receivership.

XLV. Inquiry by the said attorneys for Behn, Meyer & Company, Limited, then disclosed, not only the nullity of the alleged receivership, but that the alleged receivership did not then even nominally exist, and that, as shown by Exhibits A and B hereto annexed, the null and void order of August 10, 1922, purporting to appoint the said Joseph receiver, had been expressly vacated and quashed by the Court of First Instance of Manila itself on September 26, 1923, four months before.

XLVI. On or about January 31, 1924, the attorneys for the said alleged receiver were notified by Messrs. Guthrie, Jerome, Rand & Kresel, the said attorneys of Behn, Meyer & Company, Limited, of the setting aside of the appointment of the said alleged receiver and of the said opinions of the Court of First Instance of Manila, and that Behn, Meyer & Company, Limited, repudiated the claims of the alleged receiver and his attorneys to act in behalf of the company in any particular; that the said attorneys for the company would not consent to the payment to them of any sum by the Alien Property Custodian, and that their claims in that respect were without warrant in law or fact and unauthorized and prejudicial to the interests of the company.

XLVII. During the remainder of the present year the alleged receiver and his said attorneys took no step to challenge the right of the plaintiff and its said attorneys

herein. In that period the cause at bar was argued by the plaintiff's said attorneys in the Court of Appeals of the District of Columbia, an appeal was taken to this court by them, a motion to advance was made by them and the brief on behalf of the appellant was prepared by them. The cause was then set for hearing in this court on November 17, 1924. Thereupon the said alleged receiver gave notice of the present application to be made on the same day.

Further answering the aforesaid application, Behn, Meyer & Company, Limited, supplementing the foregoing,—

XLVIII. Denies the allegations contained in paragraphs 1, 2 and 3 of the petition for leave to intervene.

XLIX. Denies the allegation of paragraph 1 of the motion that the license or authority of Behn, Meyer & Company, Limited, to do business in the Philippine Islands, has never been cancelled or revoked by the Government of the Philippine Islands.

L. Denies the allegations contained in paragraph 2 of the motion.

LI. Admits that Behn, Meyer & Company, Limited, continued to do business in the Philippine Islands until February, 1919, and denies all the other allegations of paragraph 3 of the motion.

LII. Is without knowledge concerning the allegations of paragraph 4 of the motion.

LIII. Denies the allegations contained in paragraph 6 of the motion, except that it admits the allegation therein that the alleged receivership of Lazarus G. Joseph has been set aside, and alleges that it is without knowledge concerning the allegations therein in respect of the tak-

ing of an appeal and the filing of a bill of exceptions by the said Joseph.

LIV. Denies the allegations contained in paragraph 7 of the motion, except the allegation in respect of the receipt by the intervenor's attorneys of the bill of exceptions, as to which it is without knowledge.

LV. Denies the allegations contained in paragraph 8 of the motion.

LVI. Is without knowledge concerning the allegations contained in paragraph 9 of the motion.

LVII. Denies the allegations contained in paragraph 10 of the motion.

LVIII. Denies the allegations contained in paragraph 11 of the motion.

WHEREFORE the plaintiff and appellant herein, Behn, Meyer & Company, Limited, prays that the application of the said alleged receiver, Lazarus G. Joseph, for leave to intervene herein and be substituted for the said plaintiff and for other relief, be in all respects denied.

Washington, D. C., November, 1924.

BEHN, MEYER & COMPANY, LIMITED,
Plaintiff-Appellant,

By EMIL W. MARTENS,
Attorney-in-fact.

and

GUTHRIE, JEROME, RAND & KRESEL,
Its Attorneys-at-law.

WILLIAM D. GUTHRIE,

ISIDOR J. KRESEL,

BERNARD HERSHKOPF,

Of counsel for plaintiff-appellant.

STATE OF NEW YORK, }
 County of New York, } ss. :

EMIL W. MARTENS, being first duly sworn, deposes and says that he is a director of Behn, Meyer & Company, Limited, the plaintiff and appellant in the above entitled cause, and also its attorney in fact; that he has read the foregoing answer to the application of Lazarus G. Joseph as alleged receiver of the said plaintiff and knows the contents thereof, and that the same is true to the best of his knowledge, information and belief.

EMIL W. MARTENS.

Sworn to before me this }
 13th day of November, 1924. }

M. ROSALIE MASER,
 Notary Public, New York County.
 [SEAL]

EXHIBIT A.

UNITED STATES OF AMERICA

PHILIPPINE ISLANDS.

COURT OF FIRST INSTANCE OF MANILA
DIVISION III.

BEHN, MEYER & COMPANY, LTD.

Plaintiffs

*vs.*J. S. STANLEY, *et al*

Defendants.

No. 14757

DECREE.

Three motions have been submitted for adjudication by the court, the motion of Lazarus G. Joseph, who in his capacity as judicial depositary or receiver appointed to take over the properties of the plaintiffs, applies for an order compelling J. M. Menzi to deliver to him the books of said plaintiffs, which said Menzi now has in his possession; the motion of said J. M. Menzi praying for the rejection of said petition and the motion of John Borman, J. M. Menzi and "The Bank of the Philippine Islands" praying for leave to intervene in these proceedings for the purpose of requesting the setting aside of

the order of the court of August 10, 1922, whereby said Lazarus G. Joseph was appointed judicial depositary or receiver in this case.

An examination of the record shows that Messrs. A. N. Jureidini & Bros., who had recovered judgment against the plaintiffs on February 24, 1922, for a sum of 3488 pesos, and for the costs, applied for and secured a writ of execution on the ground of said judgment on April 6, 1922. The execution issued for this purpose having been returned by the sheriff unsatisfied for the reason that he had been unable to find within the jurisdiction of the court any property of the aforementioned plaintiffs on which execution could be levied for the purpose of securing payment of the amount contemplated in the judgment, said Messrs. A. N. Jureidini & Bros. upon their alleging that they have discovered that said plaintiffs had still sufficient property in the Islands, secured the appointment of a depositary or a receiver on August 10, 1922, there having been appointed as such Mr. Lazarus G. Joseph. The depositary or receiver thus appointed thereupon requested that J. M. Menzi, who is in possession of the books formerly belonging to the plaintiff, be ordered to surrender to him said books, alleging that the surrender of such books should be ordered in order to facilitate to him the discharge of his duties and in order to make it possible to bring the matter to an end.

J. M. Menzi, by his very detailed answer to the order served upon him ordering him to show cause why the petition of the depositary or receiver should not be granted, submitted the prayers set forth in the motions

referred to hereinabove. It is a fact appearing from the documents attached to the aforementioned motions of said Menzi, John Bordman and The Bank of the Philippine Islands, who have applied for permission to intervene in these proceedings for the purposes set forth above, that at the present time said Mr. Menzi holds the account books formerly belonging to the plaintiffs, Behn, Meyer & Co., Ltd.; that he came in possession of said books due to said books having been delivered to him by John Bordman, who had purchased all the properties, rights, chose in action and even the papers, vouchers and account books of said plaintiffs.

Said documents show furthermore (this circumstance, by the way, has been neither contested nor contradicted by Lazarus G. Joseph) that up to February 16, 1918, namely approximately 4 years before the date on which Messrs. A. N. Jureidini & Bros. recovered the aforementioned judgment against the aforementioned plaintiffs, the Alien Property Custodian in the Philippine Islands had appointed, pursuant to the provisions of the Act of Congress of the United States of America of October 12 (61), 1917, entitled: "An act defining, regulating and punishing trade with the enemy, etc." W. D. Pemberton, as depositary or receiver of all the properties of said plaintiffs. At a later date and under a permit granted for this purpose by the representative in the Philippine Islands of the Alien Property Custodian, there were sold all said properties, including the trademarks, accounts receivable, vouchers of payment and other evidences of debt and the account books of said plaintiffs, to John Bordman, by order and under the supervision of said Alien Property Custodian in the Philippine Islands, for

a sum of 660,000 pesos, which sum was paid to him by the Bank of the Philippine Islands, there having been turned over to the Alien Property Custodian a sum of 392,674.96 pesos, which is the amount of the proceeds of the liquidation of said property.

Such being the facts of the case, and the aforementioned law of the Congress of the United States of October 12 (6?), 1917, providing as it does by its section 17 that the courts of the United States are the only ones vested with jurisdiction to take cognizance of matters arising or that may arise out of any of the facts contemplated therein, namely out of facts or circumstances similar in character to the matters of Messrs. Jureidini & Bros., with which we are concerned because, as explicitly provided in Section 18 of said law, the jurisdiction of the courts of the Philippine Islands does not extend beyond the cognizance of such acts of a criminal character as are contemplated therein, this court should not and cannot order the delivery to Lazarus G. Joseph of the account books in question. Although these books were formerly the property of Behn, Meyer & Co. Ltd., they ceased to be the property of said company upon their being sold by the Alien Property Custodian to John Bordman under the provisions of the law of the Congress of the United States, to which reference has been made. This is the more indisputable as section 9 of said law contains among others the following provisions:

“That any person not being an enemy or an ally of the enemy claiming any interest in, or any right or title to any money or other property conveyed, transferred, assigned, delivered or paid to the Alien Property Custodian by virtue of this law and held by him or by the

Treasurer of the United States or owing to him by an enemy or ally of the enemy, whose property or any parts of whose property has been conveyed, transferred, assigned, or paid to the Alien Property Custodian by virtue of this law and is held by him or by the Treasurer of the United States, shall have the right to submit to said custodian a sworn statement of claim setting forth such circumstances as may be required to be set forth by said custodian. . . ."

"Except as otherwise provided in this law, monies or other properties conveyed, transferred, assigned, delivered or paid to the Alien Property Custodian shall not be subject to any lien, attachment, garnishment, trustee process, or execution, or subject to any order or decree of any Court."

At the time when there was issued the order appointing a depositary or receiver in this case, the attention of the court was not called to the fact that the properties belonging to the plaintiffs herein had been sold at a prior date by the Alien Property Custodian to John Bordman. Had the attention of the court been called to such a circumstance, said order would not have been made, especially if it were shown that said properties had been sold long before the rendering of the judgment in favor of Messrs. A. N. Jureidini & Bros.

The remedy and relief available now to Messrs. Jureidini & Bros. is to avail themselves of the action contemplated in section 10 (9?) of the law of Congress of October 12 (6?), 1917, repeatedly referred to above.

For these reasons, whereas it has been shown, in the opinion of the Court, the interest of J. M. Menzi, John Bordman and Bank of the Philippine Islands in these

proceedings, the interest of Mr. Bordman lying in the fact that he has acquired through purchase for a sum of 660,000 pesos, all the interests, rights, choses in action and vouchers of the plaintiffs herein, the interest of J. M. Menzi lying in the fact that he was appointed by said Mr. Bordman to take charge of said properties and books in his name, and the interest of the Bank of the Philippine Islands lying in the fact that this bank paid the sum of money for which said Bordman had effected the purchase.

Now therefore it is resolved to allow such parties as they are hereby allowed and authorized, to intervene in this case; and whereas the court has come to the conclusion that the court has or had no jurisdiction to appoint a judicial depositary or receiver due to the fact that all the properties of the aforementioned plaintiffs have been sold by the Alien Property Custodian pursuant to the law of Congress referred to above, now therefore it is resolved likewise to set aside and quash, as the same is hereby set aside and quashed, the order of the court of August 10, 1922, appointing as judicial depositary or receiver Lazarus G. Joseph. Let the bond given by said depositary or receiver for the faithful discharge of his duty be released; and it is hereby declared that J. M. Menzi is not bound to deliver to the aforementioned Lazarus G. Joseph the books of which he is now in possession, which books were formerly the property of the plaintiffs, Messrs. Behn, Meyer & Co., Ltd.

Thus ordered.

Manila, Philippine Islands. September 26, 1923.

ANACLETO DIAZ,
Judge.

EXHIBIT B.

COPY

UNITED STATES OF AMERICA

PHILIPPINE ISLANDS

COURT OF FIRST INSTANCE OF MANILA

DIVISION III.

BEHN, MEYER & CO., LTD.

Plaintiff,

vs.

J. S. STANLEY, et al.

Defendant.

No. 14757

DECREE.

By the motion submitted on October 3, 1923, by the depositary or receiver appointed in this case and by A. N. Jureidini & Bros., application is made for a reconsideration of the order of the court of September 26, 1923. Although in said motion the grounds are not stated on which the motion is rested, it is to be inferred from the memorandum attached thereunto that these grounds are the following:

1—That the Alien Property Custodian has not sold the properties of the plaintiffs, Behn, Meyer & Co., Ltd.

2—That the Custodian could not have sold said property because said company had never been declared an enemy company pursuant to the law of Congress of the United States entitled: "An act defining, regulating and punishing trade with the enemy and making provision for other purposes," and that the aforementioned Alien Property Custodian has never obtained possession of said properties upon a proper request of surrender for the reason that such request was impossible in view of the fact that Messrs. Behn, Meyer & Co., Ltd., had been granted by the President of the United States the necessary license to trade with the enemy.

A careful consideration of the documentary evidence submitted by John Bordman and by J. M. Menzi, who had been allowed to intervene in this case, which evidence has not been contested and consists in exhibits A, B, C, D, E and F, shows how groundless are the reasons alleged in support of the aforementioned motion for reconsideration. Exhibit A shows that on February 16, 1918, the Alien Property Custodian took possession of the entire business and of all the properties of the aforementioned company, Behn, Meyer & Co., Ltd., there having been appointed as depositary or receiver Mr. W. D. Pemberton. Exhibits D and E show that the permit granted to Behn, Meyer & Co., Ltd., under the provisions of the aforementioned law of Congress did not contemplate the carrying on of the business in which said company was engaged but merely the sale and the liquidation of such business and the delivery to the Custodian of the proceeds of such sale and liquidation, should the Custodian make a request to this effect, and they show likewise, to-

gether with exhibits B and C, that such liquidation was carried out and that the business and all the properties of said company including its vouchers and books, were sold for a sum of 660,000 pesos to a certain Mr. John Bordman, and Exhibit F shows that on February 21, 1919, the Alien Property Custodian, through his representative in the Philippine Islands, after having decided that Behn, Meyer & Co., Ltd., were an enemy, requested them to surrender all their properties for the same to pass under his control and to be administered by him in accordance with the law.

The allegation that the Alien Property Custodian has failed to comply with the provisions of the aforementioned act of Congress on trade with the enemy and with the regulations enacted for the enforcement of said law, in taking the action he has taken and in acting in the manner he has acted in the case under consideration, namely in the case of this plaintiff, is not substantiated by the evidence and the presumption of the law is that he acted exactly as he should have acted and that he complied with all the provisions of the law bearing on the case.

On the ground of the aforementioned considerations, the Court is of the opinion that its decree of September 26, 1923, is sustained by the evidence and is in accordance with the law and should be maintained. Now, therefore, the motion of reconsideration for the aforementioned resolution is hereby rejected.

Thus ordered,

Manila, Philippine Islands, Dec. 3, 1923.

ANACLETO DIAZ, *Justice*.

EXHIBIT C.

STAMP

KNOW ALL MEN BY THESE PRESENTS, that BEHN, MEYER & COMPANY, LIMITED, a corporation organized under the laws of Straits Settlements, and having its registered office at Singapore in Straits Settlements, hereinafter referred to as the Company, does hereby make, constitute and appoint Emil W. Martens, whose address is 43 White St., New York City, its true and lawful attorney, for it and in its name, place and stead to take any and all action in conformity with the provisions of Section 9 of the "Trading with the Enemy Act" or any other provisions of said act and the executive orders and proclamations issued pursuant thereto, now in force or hereafter enacted or issued, which the Company itself might take if acting in person, with reference to the recovery and/or collection of any property or the proceeds thereof, money debt or claim which it may own or have, and which is now or may hereafter be in the possession of the Alien Property Custodian by virtue of the "Trading with the Enemy Act", or in case of a debt or claim, funds available for the payment of which may be in the possession of the Alien Property Custodian, whether received by the said Alien Property Custodian as the property of itself or another; and the Company does hereby give its said attorney full power and authority (including but not thereby limiting the generality of the foregoing powers) to file with the said Custodian for it and in its name such notice or notices of its claim under oath, in such form and

containing such particulars as the said Custodian shall require; to make for it and in its name whatsoever assents and applications for the conveyance, transfer, assignment or delivery to its said attorney for it of said money or other property as may be required or as its attorney may, in his discretion, deem proper, and to institute in its name such suit or suits in equity to establish the interest, right, title or debt so claimed, as may be allowed by law; and to settle and/or compromise any such claim and/or suits, and upon delivery of any or all of said money or other property to its said attorney, to execute in its name such receipts and acquittances therefor as may be required by said Alien Property Custodian and/or by the Treasurer of the United States.

And the Company does give and grant unto its said attorney full power and authority to do and perform all acts whatsoever requisite and necessary to be done in and about the premises as fully to all intents and purposes as it might or could do if personally present, with full power of substitution and revocation, hereby ratifying and confirming all that its said attorney or his substitute shall lawfully do or cause to be done by virtue hereof.

This power is given in contemplation of all provisions of the "Trading with the Enemy Act", the executive orders and proclamations issued pursuant thereto, now existing or which may hereafter be enacted or issued, and of all rules of procedure with respect to claim under Section 9, now in force or which may hereafter be promulgated.

IN WITNESS WHEREOF, the said Company has caused its corporate name to be hereunto subscribed this 14th day of December, 1921.

BEHN, MEYER & COMPANY, LIMITED,

By

E. L. LORENZ MEYER

AD. LASPE

F. H. WITTHOEFFT

O. M. H. SIELCKEN

as Director.

In the presence of:

K. AULDER

KINR. BECK

Reg. No. 544-1921

GERMANY,
STATE OF HAMBURG,
City of Hamburg, } ss.:

Before me, a notary public in and for the City of Hamburg, Germany, this 14th day of December, 1921, personally appeared EDUARD LORENZ LORENZ-MEYER, ADOLF FRIEDRICH HEINRICH LASPE, and FRANZ HEINRICH WITTHOEFFT, to me known and known to me to be the sole surviving stockholders of, and the members of the Consulting Committee of Behn, Meyer & Company, Limited, the corporation mentioned in the foregoing instrument, and they duly and severally acknowledged to me that they executed the same in the name and on behalf of said corporation.

[Seal]

DE CHAPEAUROUGE
Notary Public

AMERICAN CONSULATE-GENERAL AT HAMBURG, SS. :

No.

I, J. Klahr Huddle, Consul of the United States of America in and for the district of Hamburg, hereby certify that the seal of Dr. Paul De Chapeaurouge, Notary Public at Hamburg, Germany, and the signature of Dr. Paul De Chapeaurouge, appearing on the document hereto annexed are true and genuine, and are entitled to full faith and credit.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my Seal of Office, this 15th day of December A. D. 1921.

[SEAL]

J. KLAHR HUDDLE,
Consul of the United States of America

[AMERICAN
CONSULAR STAMP]

Fee No. 173

U. S. Currency

Marks (Germany) 440

Reg. No. 5442-1921

GERMANY,
STATE OF HAMBURG, } ss.:
City of Hamburg, }

Before me, a notary public in and for the City of Hamburg, this 14th day of December, 1921, personally appeared Otto Max Hermann Sielcken to me known, who being by me duly sworn did depose and say that he resided in Hamburg, that he is a director of Behn, Meyer & Company, Limited, the corporation described in and which executed the foregoing instrument, and that he signed his name thereto by order of the board of directors of said corporation.

DE CHAPEAUROUGE

[Seal]

Notary Public

AMERICAN CONSULATE-GENERAL AT HAMBURG, SS. :

No.

I, J. Klahr Huddle, Consul of the United States of America in and for the district of Hamburg, hereby certify that the seal of Dr. Paul De Chapeaurouge, Notary Public at Hamburg, Germany, and the signature of Dr. Paul De Chapeaurouge, appearing on the document hereto annexed are true and genuine, and are entitled to full faith and credit.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my Seal of Office, this 15th day of December A. D. 1921.

J. KLAHR HUDDLE,
Consul of the United States of America

[SEAL]

[AMERICAN
CONSULAR STAMP]

Fee No. 174

U. S. Currency

Marks (Germany) 440

700. 845

A

ADDENDUM

NOTE.—At the request of the court, the following point, not included in the original brief, is here printed.

I (A)

The property herein involved was lawfully seized as enemy property under Section 7, subdivision (c)

The only provision in the entire act for the taking over of enemy property by the Alien Property Custodian (except as to enemy-owned shares of stock in American corporations) was Section 7, subdivision (c), reading:

If the President shall so require, any money or other property owing or belonging to or held for, by, on account of, or on behalf of, or for the benefit of an enemy or ally of enemy not holding a license granted by the President hereunder, which the President after investigation shall determine is so owing or so belongs or is so held, shall be conveyed, transferred, assigned, delivered, or paid over to the alien property custodian.

It is submitted that this provision authorized the taking over of the property of a corporation of a country other than the United States if, as here, a majority of its stock was enemy owned. Certainly in a very real sense the property of a corporation may be said to be held "on account of, or on behalf of, or for the benefit of" its stockholders. The Execu-

tive Department construed this provision as authorizing the seizure of the property of a corporation a majority of whose stock was enemy owned. Appellant concedes on page 23 of its brief that this provision authorized the seizure of the property of corporations of neutral countries. Why not, then, of any country? Moreover, throughout the act, is indicated, the intent of Congress that the Government should look beneath the corporation covering and consider whether the stockholders were enemies. See, for examples, the first part of Section 7, as to enemy stockholders in American corporations, and, also, paragraphs (6) and (11) of subdivision (b) of Section 9, as amended.

(Apparently too broad a statement of p 23 of App. brief - What is meant is "enemy property" i.e. property held for or on account of enemy by neutral corporations)

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In the Supreme Court of the United States

OCTOBER TERM, 1924

BEHN, MEYER & COMPANY, LIMITED,
appellant

v.

THOMAS W. MILLER, AS ALIEN PROPERTY
Custodian, and Frank White, as Treasurer
of the United States, appellees

No. 343

APPEAL FROM THE COURT OF APPEALS OF THE
DISTRICT OF COLUMBIA

BRIEF ON BEHALF OF APPELLEES

STATEMENT OF THE CASE.

The appellant is and at the time its property was seized by the Alien Property Custodian was a corporation of the Straits Settlement, a British Colony. It is conceded that a majority of its stock was and is owned by subjects of Germany.

The Trading with the Enemy Act as amended June 5, 1920, authorized the return of property theretofore seized by the Alien Property Custodian in the event the owner thereof, when it was seized, was—

A partnership, association, or other unincorporated body of individuals outside the United States, or a corporation incorporated

within any country other than the United States, and was entirely owned at such time by subjects or citizens of nations, States, or free cities other than Germany or Austria or Hungary or Austria-Hungary and is so owned at the time of the return of its money or other property hereunder.

A later amendment, that of March 4, 1923, extended the privilege of having property returned to corporations of countries other than enemy countries if not more than 50 per cent of their stock was owned by subjects of enemy countries.

The principal question in the case is whether the appellant, a majority of whose stock was and is owned by subjects of Germany, is nevertheless not within the implied prohibition of the return of property in the amendments aforesaid simply because at the time of the seizure of said property the appellant was not, as is claimed, within the letter of the definition under the Trading with the Enemy Act of the terms "enemy" or "ally of enemy." There is also a question as to whether it was not in reality within the definition.

ARGUMENT

I

The amendment to the Trading With the Enemy Act of June 5, 1920, prohibits the return of appellant's property.

Under the original Trading with the Enemy Act it was for the Executive Department of the Government to determine whether particular property was enemy owned (*Central Union Trust Co. v. Garvan*,

254 U. S. 554; *Stoehr v. Wallace*, 255 U. S. 239, 245), subject to the owner's right to a judicial determination of whether in fact he was at the time of the seizure and *when return of property was sought* an "enemy" or "ally of enemy." Acting under the authority of the Act and presumably upon his determination that the appellant was an "enemy" the Alien Property Custodian seized certain of appellant's property in February, 1918.

Whether appellant at the time of seizure of its property was within the letter of the definition of "enemy" or "ally of enemy" as set out in Section 2 of the original Act is not, as we view it, the determining question in the case. *Arguendo* it might be conceded that at the time mentioned appellant was neither "enemy" nor "ally of enemy" (although no such concession is made), nevertheless appellant can not recover if by reason of an amendment to the Act before its suit was brought an alteration had taken place either in its status or in its right to recover the property that had been seized.

A very large part of the brief of appellant is devoted to a discussion of the intention of Congress in the original Act. That discussion is not pertinent to the effect of the amendment. It is the amendment, however, which defeats the appellant's claim. The case turns almost entirely upon its meaning.

The significant parts of the amendment of June 5, 1920, are the following:

(b) In respect of all money or other property conveyed, transferred, assigned, delivered, or

paid to the Alien Property Custodian or seized by him hereunder and held by him or by the Treasurer of the United States, if the President shall determine that the owner thereof at the time such money or other property was required to be so conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian or at the time when it was voluntarily delivered to him or was seized by him was—

* * * *

(6) A partnership, association, or other unincorporated body of individuals outside the United States, or a corporation incorporated within any country other than the United States, and was entirely owned at such time by subjects or citizens of nations, States, or free cities other than Germany or Austria or Hungary or Austria-Hungary and is so owned at the time of the return of its money or other property hereunder;

* * * *

then the President, without any application being made therefor, may order the payment, conveyance, transfer, assignment, or delivery of such money or other property held by the Alien Property Custodian or by the Treasurer of the United States, or of the interest therein to which the President shall determine such person entitled, either to the said owner or to the person by whom said property was conveyed, transferred, assigned, delivered, or paid over to the Alien Property Custodian;

* * * *

(c) Any person whose property the President is authorized to return under the provisions of subsection (b) hereof may file notice of claim for the return of such property, as provided in subsection (a) hereof, and thereafter may make application to the President for allowance of such claim and/or may institute suit in equity to recover such property, as provided in said subsection, and with like effect. The President or the court, as the case may be, may make the same determinations with respect to citizenship and other relevant facts that the President is authorized to make under the provisions of subsection (b) hereof.

The entire amendment is set out in Appendix "A."

It is conceded in the brief of appellant herein (see page 71 of appellant's brief) that the effect of paragraph (6) above quoted is to prohibit the return of the property of such corporations as are not therein described, if any portion of their stock was enemy owned. The only question then is, Does that description exclude the appellant?

On its face the description clearly excludes the appellant.

The language is, "a corporation incorporated within any country other than the United States and * * * entirely owned * * * by subjects of nations * * * other than Germany." *Appellant is not within that description* because, while a corporation of a country other than the United States, a majority of its stock was and is owned by subjects of Germany.

It is to be noted that the application of the section is not restricted, as appellant seeks to restrict it, to "enemy" corporations. The words are "a corporation incorporated within any country." Moreover, and here we think is the insurmountable difficulty in the path of appellant, the application of subsection (b) is not, as appellant urges, only to such property of *enemies or allies of enemies* as has been seized but "*in respect of ALL money or other property conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian or seized by him hereunder.*"

There is no escape from the conclusion that this language includes the property taken from appellant, that is, no escape, unless there be interpolated in the language "*all * * * property * * * seized*" the words or their equivalent, "except property which although determined to have been enemy property when seized shall judicially be determined not to have been at the time of seizure enemy property." We submit there is no justification whatever for any such interpolation.

The whole case of appellant depends upon its contention that the plain words of the amendment should be given a restricted meaning wholly unjustified and indeed defying the language employed.

The theory urged by the appellant and the theory that it must sustain to recover is that although the amendment of 1920 purports on its face to apply to *all* money or property seized and to define what

classes of persons whose property has been seized may have it returned, nevertheless it does not apply to *all* property seized but only to a part thereof.

To sustain this theory the appellant in effect asks the court to strike out of the amendment the word "all" in the phrase "all money or other property * * * seized," to add to subsection (b) language restricting the application of subsection (b) to persons not covered in subsection (a), and to add language to paragraphs (6) and (11), if not others, of subsection (b), restricting their apparent application, and to do all of this notwithstanding it is in no sense necessary in order that reasonable effect may be given to section 9 as a whole.

Section 9 is a whole. It was enacted as a whole at the time of each of the amendments, that of 1920 and that of 1923. It should be construed as a whole, each part in the light of and as modified by other parts so as to achieve an harmonious interpretation of the several parts (*United States v. Landram*, 118 U. S. 81, 85; *A. Bryant Co. v. N. Y. Steam Fitting Co.*, 235 U. S. 327, 337; *Market Co. v. Hoffman*, 101 U. S. 112, 116; *Peck et al. v. Jenness*, 48 U. S. (7 How.) 612, 622). No principle of statutory construction can justify the contention of appellant that subsection (a) of Section 9 is to be considered altogether apart from what follows it and with no effect given to the limitations imposed upon subsection (a) by the remaining language of Section 9.

Construing the section as a whole we submit it must be held that any right to sue to recover property that might seem to be conferred by subsection (a) if it stood alone must be considered as restricted by subsection (b) to the classes of persons therein enumerated.

The contention made by appellant that it was not the intention of Congress that the amendments should effect any rights that might have existed prior to the amendments not only defies the plain language of subsection (b) but also that of subsection (e), added at the same time as (b) and providing that—

No money or other property shall be returned nor any debt allowed under this section to any person who is a citizen or subject of any nation which was associated with the United States in the prosecution of the war, unless such nation in like case extends reciprocal rights to citizens of the United States; nor in any event shall a debt be allowed under this section unless it was owing to and owed by the claimant prior to October 6, 1917, *and as to claimants other than citizens of the United States unless it arose with reference to the money or other property held by the Alien Property Custodian or Treasurer of the United States hereunder.* (Italics ours.)

If the appellant's contention is sound to the effect that subsection (a) of Section 9 must be taken without regard to the rest of the section, then section (e) becomes of no effect whatsoever. Prior to the amend-

ment of June 5, 1920, any individual, not an enemy, could sue to secure the return of his property. This applied to citizens of every nationality, so that a Frenchman or a citizen of Great Britain, provided he did not reside in enemy territory, could, if his property had been wrongfully seized, sue under Section 9 without any restriction, and secure the return thereof. However, subsection (e) provides that no money or other property shall be returned, nor any debt allowed under the section to any person who is a citizen or subject of any nation with which the United States was associated in the prosecution of the war, unless such nation in like case extends reciprocal rights to citizens of the United States. Here is a very evident restriction upon the formal provisions of Section 9, but if appellant's contention is true, a Britisher, if he is not an enemy, may sue under subsection (a) without any regard to subsection (e), and even though Great Britain does not accord reciprocal rights to American citizens, may secure the return of property or the payment of debts out of enemy property.

Furthermore, subsection (e) provides that no debt can be allowed under Section 9, unless it was owing to and owned by the claimant prior to October 6, 1917. Here is another limitation placed upon at least the apparent provisions of Section 9. Furthermore, subsection (e) provides that as to claimants other than citizens of the United States, no debt can be allowed out of property in the hands of the Custodian, unless it arose with reference to the money or other property held by the Alien Property Custodian or the Treas-

urer of the United States. Prior to the amendment of June 5, 1920, a German citizen residing in the United States who had not been interned could sue under Section 9 and secure the payment of a debt owing to him from an enemy whose property had been seized.

Since this amendment, however, such a German can not sue and secure the payment of debts unless the debt arose with reference to the property in the hands of the Custodian. The same thing is true with respect to citizens of France, England, or any other country, other than the United States. Their debt must arise with reference to the property before they can sue. This was not true, however, before the amendment of June 5, 1920. Prior to that date a citizen of Great Britain could secure the payment of his debt against an enemy out of enemy property in the hands of the Custodian, even though it did not arise with reference to the property in the hands of the Custodian. This provision has been sustained by the Courts. *Kogler v. Alien Property Custodian*, 288 Fed. 806.

It is apparent then that the amendment of June 5, 1920, did restrict the original Section 9. It must, therefore, follow that the contention of the appellant is unsound, for to follow that contention would entirely eliminate subsection (e) of the Act. Section 9 as amended June 5, 1920, is an entire statute and each part must be construed with respect to every other party. It is true that there are certain features of the amendment which give persons hereto-

fore enemies the right to recover under the Act. It was necessary to make a provision with respect to corporations whose stock was owned by enemies, in view of the confusion that had arisen.

II

The appellant was an "enemy" within the meaning of the Trading with the Enemy Act

Not only does appellant's case depend upon what we have tried to show is its untenable theory that the amendments of 1920 and 1923 do not apply to *all* property seized by the Alien Property Custodian, but upon its contention that appellant was not an "enemy" within the meaning of the Trading with the Enemy Act. We do not concede this. On the contrary, we submit that in the light of the whole Act appellant was an "enemy" and that its property was properly seized as such.

Appellant relies upon Section 2 of the Act defining who shall be deemed an "enemy" or "ally of enemy" within the meaning of the Act. So much of that section as defines "enemy" (the definition of "ally of enemy" is not different) reads as follows:

SEC. 2. That the word "enemy," as used herein, shall be deemed to mean, for the purposes of such trading and of this Act—

(a) Any individual, partnership, or other body of individuals, of any nationality, resident within the territory (including that occupied by the military and naval forces) of any nation with which the United States is at war, or resident outside the United States

and doing business within such territory, and any corporation incorporated within such territory of any nation with which the United States is at war or incorporated within any country other than the United States and doing business within such territory.

(b) The government of any nation with which the United States is at war, or any political or municipal subdivision thereof, or any officer, official, agent, or agency thereof.

(c) Such other individuals, or body or class of individuals, as may be natives, citizens, or subjects of any nation with which the United States is at war, other than citizens of the United States, wherever resident or wherever doing business, as the President, if he shall find the safety of the United States or the successful prosecution of the war shall so require, may, by proclamation, include within the term "enemy."

We must concede, of course, that appellant was not such a corporation as subdivision (a) of Section 2 expressly describes, since it was neither incorporated within an enemy country nor was it doing business within such territory. But, *a majority of its stockholders were enemies*. We do not know how large a majority. No doubt the executive officers of the United States who in the prosecution of the war seized the property involved did know. It is possible that every share of stock save one was enemy owned. In other words, the appellant was an artificial entity camouflaging the enemies of the nation and all of the property which technically it owned was in

reality their property (and that of such minority stockholders as were not enemies).

Section 2 defines as an "enemy" "any individual, partnership, or other *body of individuals*, of any nationality, resident within the territory of any nation with which the United States is at war." It will scarcely be contended that this language (and all other language in the Act) is not to be liberally construed in favor of upholding the power of the Government to do everything regarded by the executive as necessary in the prosecution of a war—in the maintenance of the very life of the nation. But in a very real sense, if not in a strictly technical sense, a corporation is but a "*body of individuals*." Will the court say, keeping in view the character of this Act as a war measure, that by reason of somewhat attenuated technical distinctions the executive branch of the Government engaged in the prosecution of a war could not, through the thin corporation covering, strike at the "enemies" underneath—the "*body of individuals*" who were within even the letter of the definition the "enemies" of the nation.

If a liberal construction were not otherwise to be assumed in favor of the power of the government in war it would certainly be suggested by the provision that by his mere proclamation the president could declare any class of persons whatever to be "enemies."

This court has never held that a corporation is an impenetrable mask. On the contrary, often, it has looked through the corporation to the individuals composing it. It has done that to subserve the

interests of those individuals. It will hardly prevent it being done to protect the vital interests of the nation. Consider, for example, the leading case holding that a constitutional provision conferring certain rights on citizens confers those rights not only in their individual but also in a corporate capacity. Reference is to *Bank of the United States vs. Deveaux*, 5 Cranch, 61, 87, wherein the question was as to whether the federal courts, having jurisdiction of "controversies between citizens of different states," could look through a corporation to the citizens composing it so as to exercise jurisdiction of a controversy between a corporation of one state and citizens of another state. Chief Justice Marshall said:

The jurisdiction of this court being limited to "controversies between citizens of the different states," both parties must be citizens to come within the description. That invisible, intangible, and artificial being, a corporation aggregate, is certainly not a citizen; and, consequently, can not sue or be sued in the courts of the United States, unless the rights of the members in this respect, can be exercised in their corporate name. * * * (But) the controversy is substantially * * * between citizens of one State, suing by a corporate name, and those of another State.

Similar cases are *McKinley v. Wheeler*, 130 U. S. 630, and *United States v. Northwestern Express Co.*, 164 U. S. 686.

So here, the United States looked through the corporation to the enemies composing it and seized its property because in reality it was their property. It was dealing with realities and stern ones and was not to be balked by fictions and Congress did not intend that it should be.

True, in Section 2, defining "enemies," corporations are specifically mentioned. True, also, there are rules of construction that in that situation would exclude corporations from the preceding reference to "individuals" and "bodies of individuals." The great rule, however, is that effect must be given to the intent as gathered from all the language employed, regardless of lesser rules of construction and we submit that the intent of this act was to present a broad definition actually or potentially including all possible enemies.

That Congress intended that the corporation shell should be pierced is perfectly apparent, of course, from the amendment of June 5, 1920, Section 9 (b)-6 thereof, wherein in effect Congress prohibits the return of the property of a corporation, without regard to whether in its corporate capacity it was ever an "enemy," if so much as one share of its stock was enemy owned. It is equally apparent from the amendment of March 4, 1923, Section 9 (b)-11, wherein in effect Congress prohibits the return of the property of a corporation, without regard to whether in its corporate capacity it was ever an "enemy," if fifty per cent or more of its

stock was enemy owned. These amendments amount to a legislative construction or explanation of the intent of the original act that the definition therein of individuals of certain countries as "enemies" included such individuals whether acting in a corporate capacity or otherwise.

Not only, as we think, do the amendments to the Trading with the Enemy Act throw light upon what was intended by Congress should be included within the term "enemy" as defined by that act, but further light is to be had from the Act Terminating the War. (Federal Statutes Annotated, page 68.) Section 5 of that Act is as follows:

SEC. 5. *Seized property—disposition.*—All property of the Imperial German Government or its successor or successors, and of all German nationals which was, on April 6, 1917, in or has since that date come into the possession or under control of, or has been the subject of a demand by the United States of America, or of any of its officers, agents, or employees, *from any source or by any agency whatsoever*
 * * * shall be retained by the United States of America and no disposition thereof made, except as shall have been heretofore or specifically hereafter shall be provided by law, until such time as the Imperial German Government and the Imperial and Royal Austro-Hungarian Government or their successor or successors, shall respectively have made suitable provision for the satisfaction of all claims against said Governments, of all

persons, wheresoever domiciled, who owe permanent allegiance to the United States of America and who have suffered, through the acts of the Imperial German Government, or its agents, or the Imperial and Royal Austro-Hungarian Government, or its agents, since July 31, 1914, loss, damage, or injury to their persons or property, directly or indirectly, whether through the ownership of shares of stock in German, Austro-Hungarian, American, or other corporations, or in consequence of hostilities or of any operations of war, or otherwise. * * *

Clearly this act contemplated the retention of such property as belonged when seized to German and other enemy nationals whether in their individual or corporate capacities. Property which has come under the control of the United States "*from any source* * * * *whatsoever*" is to be retained. When this act was passed the property of this appellant and others in the same situation had been taken and was under the control of the United States and was therefore a part of the property contemplated by the Act. The Act impliedly recognizes that it was properly seized originally as the property of an "enemy" and that for that reason its retention is justified. *In any event it provides for the retention of this property.*

III

Without regard to the definition of "enemy" in the act the United States properly seized appellant's property as enemy property

There is another argument against the position taken by the appellant, the validity of which is not affected by the definition of "enemy" in Section 2 of the Trading with the Enemy Act.

The right of the United States temporarily to seize the property of an enemy in time of war certainly did not require legislative authorization, although the power to confiscate such property would under *Broœn v. United States*, 8 Cranch, 110, require such authorization.

It is self-evident, we think, that the war powers of the Executive, having their origin in the Constitution, embraced the right of temporary seizure. Being at war, seizure of enemy property, wherever situated, was within the general powers of that branch of the government charged with the conduct of war. No duty was incumbent on the Executive to inquire of Congress who were enemies, or whether those who in their individual capacities were concededly enemies were also enemies in a corporate capacity. The Executive had the constitutional right to seize the property of any enemy and to say that the property of a corporation the real ownership of which was in enemies was enemy property.

Without statutory authorization it was held in England that seizure of the property of corporations some of whose stock was owned by enemies was a proper exercise of war powers.

The question as to who is the owner of a corporation in time of war when it becomes a question of seizing property was determined by the British prize courts in several cases. In the *Steamship St. Tudno* (1916), 5 Lloyds Rep. of Prize Cas. 198 (1916 Probate 291); (86 Law Journal Probate 1), the steamship *St. Tudno* was owned by an English corporation registered in England. The ship flew the British flag. The directors of the company were partly Englishmen and partly Germans. The stock for the most part was held by Germans, and what was not actually in the name of Germans was held beneficially for them by Englishmen. The ship was chartered to a German corporation, the Hamburg-American Line. She was seized and condemnation proceedings in the Probate, Divorce, and Admiralty Division of the High Court of Justice were instituted. The ship was condemned as enemy property. Amongst other things the Court said:

Now apart from technicalities, could anybody say that this ship belonged to a British company? If it did in name belong to a British company, that covering was the merest, thinnest shell, and I must break through it, as I do break through it, in order to ascertain who the real owners of the ship were. There can be no doubt that the real owners are the Hamburg-Amerika Line and if the ship earned during the period of the war (as it has earned up till now) considerable sums, all those sums would have to be accounted for to citizens of Germany after the war. I merely point

in order to emphasize that the whole and sole ownership in the ship and everything appurtenant to it was in every real and business sense in the Hamburg-Amerika Linie.

* * * * *

Accordingly, if the case came before me upon an application by the proper officials for the forfeiture of this ship on the ground that she was not owned by a person qualified to own a British ship because the principal place of business was not in this country, I should hold in favor of the Crown and should order the forfeiture of the vessel. This is only another way of saying that I have come to the conclusion in this case that the name of the British company is a mere name, and that to the very minutest particular there was no kind of beneficial ownership of this ship vested in anybody except the Hamburg-Amerika Linie, and that its principal place of business was Hamburg.

* * * * *

The question, therefore, which is left for me to determine, namely, was this ship of enemy character and enemy property at the time of the seizure?—is one which I answer in the affirmative. She was.

See also *The Michigan*, 5 Lloyd's Prize Cas. 42, and *Daimler Co. v. Continental Tire and Rubber Co.*, decided by the House of Lords, 32 T. L. R. 624. Special attention is called to the opinion of Lord Halsbury in the case last named.

If we have been correct so far then the court will inquire not only whether the property seized in this

instance was the property of an "enemy" within the strict letter of the definition of that word in Section 2 of the Act but whether within *any* proper definition of the term enemy the appellant might properly be included. We submit that that question can not be answered otherwise than it was answered by the government when it seized the property as enemy property. Having been so seized its return is prohibited not only by the amendments to the Trading with the Enemy Act of 1920 and 1923 but by Section 5 of the Act Ending the War.

CONCLUSION

It is respectfully submitted that the decision of the Court of Appeals of the District of Columbia should be affirmed. The property seized in this instance was rightfully seized as that of an "enemy." The appellant is not one of those who are entitled to the return of property thus seized. Until Congress shall make provision for the return of this property no action lies to compel return.

JAMES M. BECK,
Solicitor General.

MERRILL E. OTIS,
Special Assistant to the Attorney General.

NOVEMBER, 1924.

APPENDIX A

Section 9 of the Trading with the Enemy Act, including the amendment of June 5, 1920, and including also the amendment of March 4, 1923. The amendment of March 4, 1923, added clauses (9), (10), and (11). The amendment of June 5, 1920, added all of subdivision (b) except clauses (9), (10), and (11).

SEC. 9. (a) That any person not an enemy or ally of enemy claiming any interest, right, or title in any money or other property which may have been conveyed, transferred, assigned delivered, or paid to the Alien Property Custodian or seized by him hereunder and held by him or by the Treasurer of the United States, or to whom any debt may be owing from an enemy or ally of enemy whose property or any part thereof shall have been conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian or seized by him hereunder and held by him or by the Treasurer of the United States may file with the said custodian a notice of his claim under oath and in such form and containing such particulars as the said custodian shall require; and the President, if application is made therefor by the claimant, may order the payment, conveyance, transfer, assignment, or delivery to said claimant of the money or other property so held by the Alien Property Custodian or by the Treasurer of the United States, or of the interest therein to which the President shall determine said claimant is entitled: *Provided*, That no such order by the President shall bar any person from the prosecution of any suit at law or in equity against the claimant to

establish any right, title, or interest which he may have in such money or other property. If the President shall not so order within sixty days after the filing of such application or if the claimant shall have filed the notice as above required and shall have made no application to the President, said claimant may institute a suit in equity in the Supreme Court of the District of Columbia or in the district court of the United States for the district in which such claimant resides, or, if a corporation, where it has its principal place of business (to which suit the Alien Property Custodian or the Treasurer of the United States, as the case may be, shall be made a party defendant), to establish the interest, right, title, or debt so claimed, and if so established the court shall order the payment, conveyance, transfer, assignment, or delivery to said claimant of the money or other property so held by the Alien Property Custodian or by the Treasurer of the United States or the interest therein to which the court shall determine said claimant is entitled. If suit shall be so instituted, then such money or property shall be retained in the custody of the Alien Property Custodian, or in the Treasury of the United States, as provided in this Act, and until any final judgment or decree which shall be entered in favor of the claimant shall be fully satisfied by payment or conveyance, transfer, assignment, or delivery by the defendant, or by the Alien Property Custodian, or Treasurer of the United States on order of the court, or until final judgment or decree shall be entered against the claimant or suit otherwise terminated.

(b) In respect of all money or other property conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian or seized by him hereunder and held by him or

by the Treasurer of the United States, if the President shall determine that the owner thereof at the time such money or other property was required to be so conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian or at the time when it was voluntarily delivered to him or was seized by him was—

(1) A citizen or subject of any nation or State or free city other than Germany or Austria or Hungary or Austria-Hungary, and is at the time of the return of such money or other property hereunder a citizen or subject of any such nation or State or free city; or

(2) A woman who, at the time of her marriage, was a subject or citizen of a nation which has remained neutral in the war, or of a nation which was associated with the United States in the prosecution of said war, and who, prior to April 6, 1917, intermarried with a subject or citizen of Germany or Austria-Hungary, and that the money or other property concerned was not acquired by such woman, either directly or indirectly, from any subject or citizen of Germany, or Austria-Hungary subsequent to January 1, 1917; or

(3) A woman who at the time of her marriage was a citizen of the United States, and who prior to April 6, 1917, intermarried with a subject or citizen of Germany or Austria-Hungary, and that the money or other property concerned was not acquired by such woman, either directly or indirectly, from any subject or citizen of Germany or Austria-Hungary subsequent to January 1, 1917; or who was a daughter of a resident citizen of the United States and herself a resident or former resident thereof, or the minor daughter or daughters of such woman, she being deceased; or

(4) A citizen or subject of Germany or Austria or Hungary or Austria-Hungary and was at the time of the severance of diplomatic relations between the United States and such nations, respectively, accredited to the United States as diplomatic or consular officer of any such nation, or the wife or minor child of such officer, and that the money or other property concerned was within the territory of the United States by reason of the service of such officer in such capacity; or

(5) A citizen or subject of Germany or Austria-Hungary, who by virtue of the provisions of sections 4067, 4068, 4069, and 4070 of the Revised Statutes, and of the proclamations and regulations thereunder, was transferred, after arrest, into the custody of the War Department of the United States for detention during the war and is at the time of the return of his money or other property hereunder living within the United States; or

(6) A partnership, association, or other unincorporated body of individuals outside the United States, or a corporation incorporated within any country other than the United States, and was entirely owned at such time by subjects or citizens of nations, States, or free cities other than Germany or Austria or Hungary or Austria-Hungary and is so owned at the time of the return of its money or other property hereunder; or

(7) The Government of Bulgaria or Turkey, or any political or municipal subdivision thereof; or

(8) The Government of Germany or Austria or Hungary or Austria-Hungary, and that the money or other property concerned was the diplomatic or consular property of such Government; or

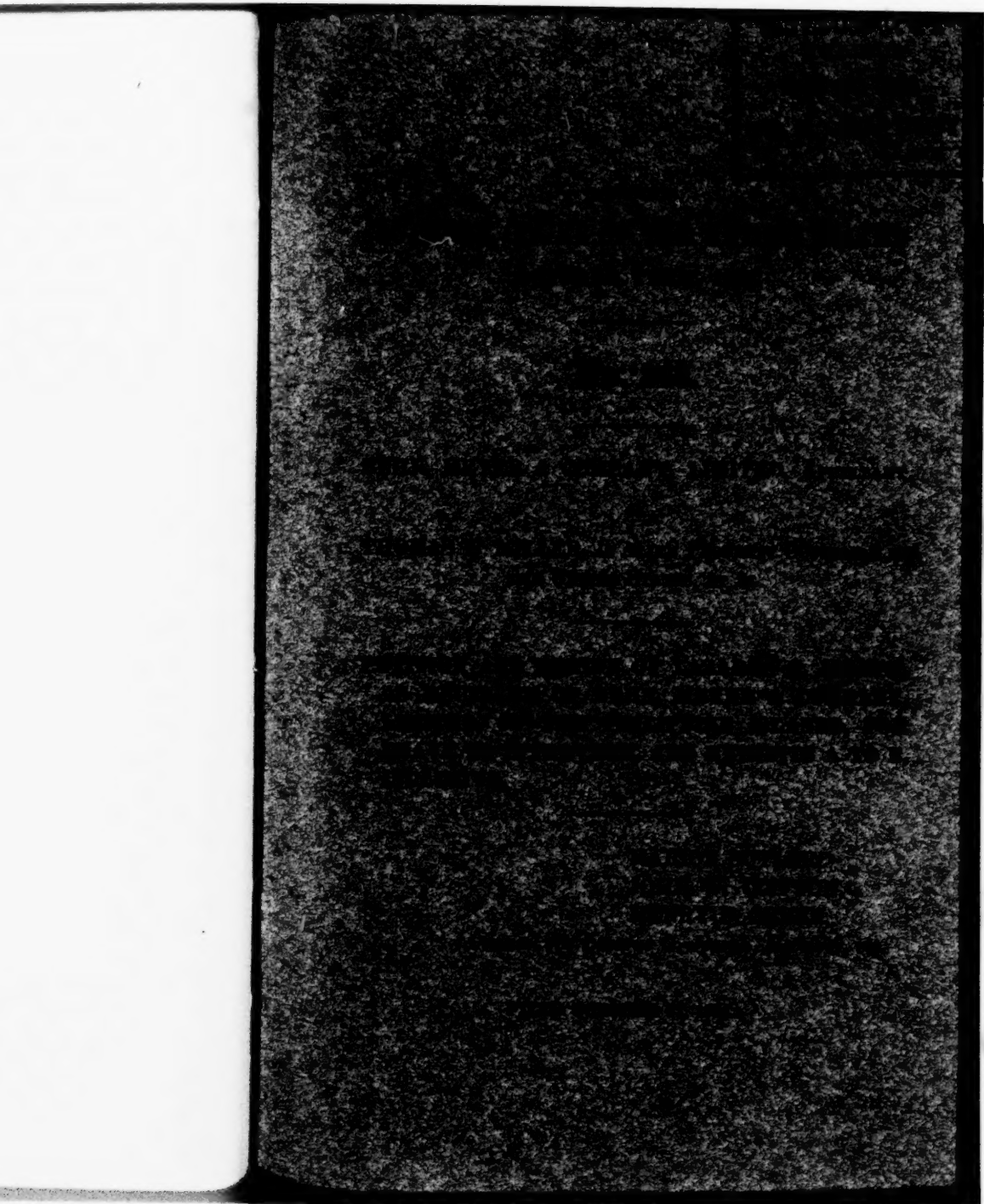
(9) An individual who was at such time a citizen or subject of Germany, Austria, Hungary, or Austria-Hungary, or who is not a citizen or subject of any nation, State, or free city, and that such money or other property, or the proceeds thereof, if the same has been converted, does not exceed in value the sum of \$10,000, or although exceeding in value the sum of \$10,000 is nevertheless susceptible of division, and the part thereof to be returned hereunder does not exceed in value the sum of \$10,000: *Provided*, That an individual shall not be entitled, under this paragraph, to the return of any money or other property owned by a partnership, association, unincorporated body of individuals, or corporation at the time it was conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian, or seized by him hereunder; or

(10) A partnership, association, other unincorporated body of individuals, or corporation, and that it is not otherwise entitled to the return of its money or other property, or any part thereof, under this section, and that such money or other property, or the proceeds thereof, if the same has been converted, does not exceed in value the sum of \$10,000, or although exceeding in value the sum of \$10,000, is nevertheless susceptible of division, and the part thereof to be returned hereunder does not exceed in value the sum of \$10,000: *Provided*, That no insurance partnership, association, or corporation, against which any claim or claims may be filed by any citizen of the United States with the Alien Property Custodian within sixty days after the time this paragraph takes effect, whether such claim appears to be barred by the statute of limitations or not, shall be entitled to avail itself of the provisions of this paragraph until such claim or claims are satisfied; or

(11) A partnership, association, or other unincorporated body of individuals, having its principal place of business within any country other than Germany, Austria, Hungary, or Austria-Hungary, or a corporation, organized or incorporated within any country other than Germany, Austria, Hungary, or Austria-Hungary, and that the control of, or more than 50 per centum of the interests or voting power in, any such partnership, association, other unincorporated body of individuals, or corporation, was at such time, and is at the time of the return of any money or other property, vested in citizens or subjects of nations, States, or free cities other than Germany, Austria, Hungary, or Austria-Hungary: *Provided, however,* That this subsection shall not affect any rights which any citizen or subject may have under paragraph (1) of this subsection—

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IN THE
SUPREME COURT OF THE UNITED STATES.
OCTOBER TERM, 1924.

No. 343.

BEHN, MEYER & CO., LIMITED, APPELLANT,

vs.

THOMAS W. MILLER, AS ALIEN PROPERTY CUSTODIAN OF
THE UNITED STATES, AND FRANK WHITE, AS TREAS-
URER OF THE UNITED STATES, APPELLEES; LAZARUS G.
JOSEPH, AS RECEIVER OF BEHN, MEYER & CO., LIMITED.

INTERVENTION.

Comes now Lazarus G. Joseph, receiver of Behn, Meyers
& Co., Limited, by his attorneys and shows:

1.

That on August 10, 1922, the said Lazarus G. Joseph was
appointed receiver of Behn, Meyer & Co., Limited, as a for-
eign corporation duly registered in and under the laws of
the Philippine Islands, and that he is still the receiver of the
said corporation.

2.

That as such receiver your petitioner has an interest in
proceedings in this Court in the matter of Behn, Meyer &

Co., Limited, against Thomas W. Miller, as Alien Property Custodian, and Frank White, as Treasurer of the United States, being No. — of the docket of this Court, as is shown by the attached motion, which said motion is made a part hereof.

3.

That, as shown from said motion, your petitioner has a legal interest in the subject-matter of these proceedings, and that he is a proper, indispensable, and necessary party to the proceedings, and that this is a proper case for intervention.

Wherefore your petitioner respectfully prays that an order be issued permitting him to intervene in said cause for the purpose of being substituted for the plaintiff, and for such other further relief as to the Court may seem just and equitable.

Washington, District of Columbia, October 27, 1924.

MARION BUTLER,
JOHN W. CLIFTON,
HENRY D. GREEN,

*Attorneys for Lazarus G. Joseph, as
Receiver of Behn, Meyer & Co., Limited.*

Received copy October 27, 1924.

.....,
Attorneys for the Plaintiff.

.....,
Attorneys for the Defendants.

IN THE SUPREME COURT OF THE UNITED STATES.

BEHN, MEYER & CO., LIMITED, *Appellant,**against*

THOMAS W. MILLER, *as Alien Property Custodian of the United States, and FRANK WHITE, as Treasurer of the United States, Appellees; LAZARUS G. JOSEPH, as Receiver of Behn, Meyer & Co., Limited.*

MOTION.

Comes now Lazarus G. Joseph, receiver of Behn, Meyer & Co., Limited, intervener in the above-entitled action, and, with leave of the Court first had and obtained, respectfully shows the Court as follows:

1. That in the year 1905 the corporation of Behn, Meyer & Co., Limited, was duly incorporated at Singapore, Straits Settlements, a Crown colony of the Kingdom of Great Britain; that in 1907 the said corporation duly applied to the proper authorities in the Philippine Islands to be admitted to the Philippine Islands, there to do business as a foreign corporation under and subject to the laws of the Philippine Islands; that on the 5th day of February, 1907, after having duly complied with all the requirements of the laws of the Philippine Islands, the said corporation was duly admitted and licensed to do business in the said Philippine Islands, which said business will hereinafter be referred to as Behn, Meyer & Co., Limited, of the Philippine Islands, a copy of which certificate is hereto attached, marked

Exhibit A, and prayed to be taken and read as a part hereof, and that said license or authority has never been canceled or revoked by the Government of the Philippine Islands.

2. That in the year 1914 the Government of Great Britain, acting under the laws of that country, took over and assumed control of the said corporation of Behn, Meyer & Co., Limited, at Singapore, Straits Settlements, and took over and seized all of the shares of stock of the said corporation, and has continued to hold the same, and that the same are now held by the Public Trustee of Great Britain.

3. That the said corporation of Behn, Meyer & Co., Limited, from the date of the granting to it of the license and authority to do business in the Philippine Islands as aforesaid, continued to do business in the said Philippine Islands until February, 1919; that prior to February, 1919, the agent in the Philippine Islands of said corporation, one J. M. Menzi, conducting the business of Behn, Meyer & Co. authorized to be conducted in the Philippine Islands under said license, had, with intent to defraud the said company, purported to sell to one John Bordman a large number of assets of said company, said sale not being a *bona fide* transaction, but a fraudulent device for the purpose of obtaining the assets of the business of the said corporation in the Philippine Islands; that to further defraud the said corporation in the Philippine Islands the said agent, J. M. Menzi, with the aid, connivance, and assistance of certain of the employees of the Alien Property Custodian in the Philippine Islands, caused to be paid over to the Alien Property Custodian and the Treasurer of the United States large sums of money, which sums of money are now in the Treasury

of the United States and which said sums of money were paid over without any justification or authority in law, and that, as a result of the corrupt and fraudulent practices of its said agent and others, the said Behn, Meyer & Co., Limited, of the Philippine Islands became insolvent, making the appointment of a receiver necessary, and that on the 10th day of August, 1922, Lazarus G. Joseph was duly appointed receiver of said corporation of Behn, Meyer & Co., Limited, of the Philippine Islands by the Court of First Instance of Manila, Philippine Islands, a certified copy of said appointment being hereto attached marked Exhibit "B" and prayed to be taken and read as a part hereof, and that the said Lazarus G. Joseph is still the receiver of the said Behn, Meyer & Co., Limited, of the Philippine Islands.

4. That thereafter, in the year 1922, your intervener, the said Lazarus G. Joseph, as receiver, duly filed with the Alien Property Custodian, as required by section 9 of the Trading with the Enemy Act, a sworn notice of his claim to the property and assets of the said company delivered to the said Alien Property Custodian and the Treasurer of the United States as above set forth.

5. That your intervener is not now and never has been an "enemy" or "ally of enemy" as defined by the Trading with the Enemy Act, and has never been proclaimed by the President of the United States within said terms or either of them; that your intervener has never been a resident within or incorporated within or done business within any part of the territory (including that occupied by the military and naval forces) of any nation with which the United States is or at any time since April 6, 1917, was at war; that it is not

now and never has been a resident within any part of the territory (including that occupied by the military and naval forces) of any nation which now is or at any time since April 6, 1917, was an ally of any nation with which the United States now is or was at any time since said date was at war.

6. That your intervener is now the receiver of the said corporation of Behn, Meyer & Co., Limited, of the Philippine Islands, notwithstanding that his appointment has been attacked by utter strangers to the original proceedings and set aside by the substitute judge of the Court of First Instance of Manila during the absence of the regular judge of the Court of First Instance of Manila while on vacation in the United States, which said resolution and decision was properly and duly excepted from and properly and duly appealed to the Supreme Court of the Philippine Islands, a bill of exceptions having been properly and duly presented and having been duly and properly certified and presented to the Supreme Court of the Philippine Islands, a certified copy of said bill of exceptions being hereto attached marked "Exhibit C" and prayed to be taken and read as a part hereof, and that the said exception, appeal, presentation and perfection of the bill of exceptions stays the order of the substitute judge of the Court of First Instance of Manila under the laws of the Philippine Islands.

7. That the attorneys for your intervener did not receive the certified copy of the bill of exceptions until the month of September, 1924, and were without knowledge of these proceedings prior to the order of the substitute judge of the Court of Manila of September 27, 1923, and December 3,

1923, set out in Exhibit "C," and that they have used due and proper efforts to secure the necessary documents and evidence to present in the present proceedings.

8. That it appears upon the face of the original bill of complaint filed in the Supreme Court of the District of Columbia in this cause, in the verification of said bill of complaint, that this suit is not brought by any person with legal or lawful authority in law to bring the same, in that it appears that Emil W. Martens, who signed the said bill of complaint on behalf of Behn, Meyer & Co., Ltd., and who verified the same, was not an officer of the corporation or one duly authorized to act for it or on its behalf; that the said Emil W. Martens has never exhibited before this Honorable Court or any other court during these proceedings any power of attorney or authorization to bring this suit for or on behalf of Behn, Meyer & Co., Limited, and your intervener is informed and believes, and so believing avers, that the said Emil W. Martens has no power of attorney from the said corporation authorizing him to bring this suit for or on behalf of the corporation and is not the attorney-in-fact for the said corporation, and that certain persons who are German subjects and nationals and were and are "enemies" under the provisions of the Trading with the Enemy Act, for the purpose of obtaining and securing the possession of the property of your intervener, the subject-matter of this action, now in the Treasury of the United States, executed a power of attorney to the said Emil W. Martens in which they represented themselves to be the sole surviving stockholders of the parent corporation of Behn, Meyer & Co., Limited, and that, acting under and pursuant

to this alleged power of attorney, the said Emil W. Martens signed the said bill and the said verification; Emil W. Martens has not exhibited the power of attorney given him by the German subjects and nationals aforesaid, which said power of attorney your intervener is informed and believes is now in the office of the Alien Property Custodian in Washington.

9. That your intervener has filed in the Court of First Instance of Manila a complaint, entitled "Lazarus G. Joseph, receiver of Behn, Meyer & Co., Ltd., plaintiff, against John Bordman, J. M. Menzi, and the Bank of the Philippine Islands, defendants," complaining of fraud practiced by the said defendants, a copy of which complaint is attached hereto marked Exhibit "D" and prayed to be taken and read as a part hereof.

10. That all the money now held in the Treasury of the United States and received by the Alien Property Custodian and the Treasurer of the United States as the property of Behn, Meyer & Co., Limited, and other sums received by the Alien Property Custodian and the Treasurer of the United States from the defendants in the above-mentioned cause filed in the Court of First Instance of Manila, as set forth above, is the property of your intervener and subject to the laws of the Philippine Islands and to the jurisdiction of the Court of First Instance of Manila, Philippine Islands.

11. That the rights, if any, of the persons representing the plaintiff, or of the plaintiff Behn, Meyer & Co., Limited, to property or assets of Behn, Meyer & Co., Limited, in the Philippine Islands are subject to the exclusive jurisdiction

of the Court of First Instance of Manila, and that your intervener has the right to be substituted in place of the said plaintiff in the present cause.

Wherefore your intervener prays (1) that he be substituted for the herein plaintiff for the purpose of amending the complaint herein in the manner and form set out in the proposed amended complaint attached hereto and made a part hereof and marked for identification Exhibit "E"; (2) that the defendants herein be required to file their pleading to the amended answer as is herein set out; (3) that this Honorable Court order further proof be taken, and that a commission issue for that purpose in order that this Honorable Court may with promptness terminate this litigation without delay and unnecessary expense to the parties herein, and (4) for such other and further relief as to this Court may seem just and equitable.

Washington, District of Columbia, October 27, 1924.

MARION BUTLER,
JOHN W. CLIFTON,
HENRY D. GREEN,

*Attorneys for Lazarus G. Joseph, as Receiver of Behn,
Meyer & Co., Limited, of the Philippine Islands.*

EXHIBIT A.

The Government of the Philippine Islands.

(Philippine Islands.)

Claim 11061.

Trust 50238.

Department of Commerce and Communications,
Bureau of Commerce and Industry,
Mercantile Register.

To all to whom these presents may come, Greeting:
A todos los que la presente vieren, Salud:

This is to certify That the annexed is a true and complete transcript of the

Certifico que la adjunta es verdadera y completa copia de

Articles of Incorporation and the Certificate of Registration
of "Behn, Meyer & Company, Ltd.",

which were duly filed with the Mercantile Register of the
Bureau of Commerce and Industry on the fourth
que han sido debidamente archivados en el Registro Mercantil de la Oficina de Comercio e Industria el día
day of February, Anno Domini nineteen hundred and seven.
de del Año del Señor mil novecientos.

In testimony whereof, I have hereunto set my hand and caused

En testimonio de lo cual firmo la presented con mi puno
y letra y hago
the seal of the said Register to be affixed at Manila

estampar el sello de dicho Registro en
this fifteenth day of August, Anno
hoy de del Ano

Domini nineteen hundred and twenty-two.
del Senor mil novecientos.

J. M. UNSON,
Acting Director.

Internal Revenue Tax, Philippine Islands. 20¢, Documentary.

The Government of the Philippine Islands.
Department of Commerce and Communications,
Bureau of Commerce and Industry,
Mercantile Register.

I, David F. Wilber, Consul General of the United States of America at Singapore, Straits Settlements, do hereby certify that the document to which this certificate is attached is a true copy of the memorandum and Articles of Association of Behn, Meyer & Company, Limited, Registered on the 11th day of December, 1905, in Singapore, Straits Settlements.

Fee \$2.00 U. S. gold, equal to \$3.60 local currency paid by affixing stamp in the original copy of the document.

Witness my hand and seal of this Consulate General this 15th day of December, 1906, at Singapore, S. S.

Fee Stamp, \$2.00.

The Government of the Philippine Islands.

Department of Commerce and Communications,
Bureau of Commerce and Industry,
Mercantile Register.

Singapore, Straits Settlements.

The Companies Ordinance, 1889.

Company Limited by Shares.

*Memorandum of Association of Behn, Meyer & Company,
Limited.*

1. The Name of the Company is "Behn, Meyer and Company, Limited."

2. The Registered Office and domicile of the Company is in Singapore, Straits Settlements.

3. The objects for which the Company is established are:

(a) To acquire and carry on the business now carried on by Behn, Meyer and Company, at Singapore, and by the Branch Houses or Agencies thereof, together with the goodwill of such business and the whole or any part of the movable and immovable property, real and personal property, and rights held and enjoyed in connection with such business, and to undertake all or any of the liabilities thereof.

(b) To enter into, adopt and carry into effect the agreements mentioned or referred to in Clause 3 of the Articles of Association of the Company, either with or without modification.

(c) To carry on business as General Merchants, Exporters and Importers, General Storekeepers, Wholesale and Retail

Traders, Shippers, Bankers, Agents for Bankers, Shipowners, Shipping Agents, Carriers, Insurers against losses of all kinds, Commission and Insurance Agents, Estate and Property Agents, Warehousemen, Lightermen, Ships' Agents, Contractors, Builders, Guarantors, Wharf and Dock Owners or Lessees, Owners or Lessees of Railways and Tramways, Owners of Mining, Planting, and other properties wherever situate, Owners or Lessees of craft, plant and appliances for Pearl Shell seeking by diving, Planters, Miners, Dealers in Shares and Stocks, Brokers, General or Special Agents or Managers at Singapore and elsewhere, whether in the Malay Peninsula or not.

(d) To buy, sell, manufacture, repair, alter, exchange, import and export and deal in all substances, articles and things capable of being used in any such businesses as aforesaid, or required for the purposes of any wholesale or retail business of the Company.

(e) To purchase, take on lease, or in exchange, build and construct upon, develop, hire, or otherwise acquire any movable and immovable property, real or personal property, and any rights or privileges, or interests, which the Company may think necessary, convenient or desirable with reference to any of these objects, and capable of being profitably dealt with in connection with any of the Company's business, property, or rights for the time being, and in particular any land, buildings, wharves, piers, docks, railways, tramways, mines, easements, concessions, patents, patent rights, or rights of an analogous character, whether British or foreign, licenses, general or special, farms, or farmed privileges, monopolies, secret processes, trade-marks, copyrights, engines, machinery, ships, boats, barges, rolling stock, plant, implements, tools, patterns of all kinds, and stock-in-trade.

(f) To purchase or otherwise acquire and hold, and to charter ships and vessels of all kinds or any interest therein.

(g) To purchase or otherwise acquire and undertake all or any part of the business, property and liabilities of any person, company, syndicate or partnership carrying on any business which this Company is authorized to carry on, or possessed of property suitable for the purposes of the Company.

(h) To amalgamate or unite with or absorb into the Company any other company or association or business or the members of any other company or association wherever formed for objects similar, analogous or subsidiary to any of the objects of the Company, or carrying on any business capable of being conducted so as directly or indirectly to benefit the Company, and to form, establish and bring out, and assist in the formation or establishment of any such company or association, and to acquire, hold and deal in shares or interests therein.

(i) To enter into partnership or into any arrangement for sharing profits, union of interests, reciprocal concessions, or co-operation with any person, partnership, or company, carrying on or about to carry on any business which this Company is authorized to carry on, or any business or transaction capable of being conducted so as directly or indirectly to benefit this Company, and to take or otherwise acquire and hold shares or stock in or securities of, and to subsidize or otherwise assist any such company, and to sell, hold, re-issue, with or without guarantee, or otherwise deal with such shares or securities.

(j) To pay for any property or business or services rendered or to be rendered in shares (to be treated as either wholly or partly paid up) or debentures or debenture stock of the Company or in money or partly in shares or debentures or debenture stock and partly in money.

(k) To sell, lease, surrender, let on hire, reclaim, improve, work, manage, develop, mortgage, pledge, exchange, dispose of, turn to account, or otherwise deal with all or any of the property and rights of the Company, and to construct,

maintain, and alter or pull down any buildings, wharves, piers, or works owned by or necessary or convenient for the purposes of the Company, and grant licenses to use any inventions belonging to the Company.

(l) To sell the undertaking of the Company or any part thereof for such consideration as the Company may think fit and in particular for shares, debentures or securities of any other company, either formed to acquire the same or having objects altogether or in part similar to those of this Company.

(m) To promote any other company for the purpose of acquiring all or any of the property, rights, and liabilities of the Company, or of advancing directly or indirectly the objects or interests thereof, or for any other purposes which may seem directly or indirectly calculated to benefit this company, and to take or otherwise acquire and hold shares, stocks, or obligations of any such company or of any other company having objects altogether or in part similar to those of this Company or carrying on any business capable of being conducted so as directly or indirectly to benefit this Company and to guarantee the payment of any debentures or securities issued by any such company and upon a distribution of assets or division of profits to distribute any such shares, stocks, or obligations, amongst the members of this Company in specie.

(n) To invest or otherwise deal with the moneys of the Company upon such security or without security and in such manner as may from time to time be determined.

(o) To lend money to such persons and on such terms, as may seem expedient and in particular to customers and others having dealings with the Company, and to guarantee or engage as security for the contracts, undertakings, responsibilities or liabilities of any person or association or company.

(p) To borrow or raise money for the purpose of the Company, receive money on deposit at interest or otherwise

and for the purpose of raising or securing money or for any other purpose to issue any mortgages, debentures, debenture stock, bonds, letters of hypothecation, or lien, or obligations of the Company, either at par premium or discount and either redeemable or irredeemable or perpetual, secured upon all or any part of the undertaking, revenue, rights and property of the Company, present and future, including uncalled capital or the unpaid calls of the Company and to exchange or vary from time to time any such securities.

(*g*) To make, accept, endorse, execute, discount, and purchase Promissory Notes, Bills of Exchange and other negotiable instruments.

(*r*) To enter into arrangements with any government or authority, supreme, municipal, local or otherwise, and to obtain from any such government or authority all rights, concessions, and privileges, that may seem conducive to the Company's objects or any of them.

(*s*) To procure the Company to be registered in any foreign country, colony or place.

(*t*) To obtain any Ordinance or Regulation in the Colony of the Straits Settlements or elsewhere for enabling the Company to carry any of its objects into effect, or for effecting any modification of the Company's constitution, or for any other purposes which may seem expedient, and to oppose any proceedings or applications which may seem calculated directly or indirectly to prejudice the Company's interests.

(*u*) To establish, maintain, and work agencies or branch firms in any part of the world in connection with the business of the Company or any part thereof.

(*v*) To provide for the welfare of persons in the employment of the Company or formerly in their employment and the widows and children of such person and others dependent upon them, by granting money or pensions, providing

schools, reading rooms, places of recreation, subscribing to sick or benefit clubs or societies or otherwise as the Company shall think fit.

(w) To establish and support or aid in the establishment and support of associations, institutions, or conveniences calculated to benefit persons employed by the Company or having dealings with the Company, and to subscribe or guarantee money for charitable or benevolent objects, or for any exhibition, or any public, general, or useful object.

(x) To do all or any of the above things in Singapore or elsewhere in any part of the world, either as principals, agents, contractors, or otherwise, and either alone or in conjunction with others, and either by or through agents, sub-contractors, trustees, corporations, or otherwise.

(y) To pay any brokerage fees, or commission to brokers for placing or obtaining subscription for any of the Company's shares or securities, and to remunerate any person or company for services rendered or to be rendered in placing any shares or securities of the Company, or in relation to the establishment of the Company, or of any company promoted by the Company.

(z) To undertake, the office of trustee, receiver and liquidator, whether official or otherwise, executor, administrator, committee, manager, attorney, delegate, substitute, treasurer, and any other offices or situations of trust or confidence, and to perform and discharge the duties and functions incident thereto and generally to transact all kinds of trust and agency business, either gratuitously or otherwise.

(zz) To do all such other things as are incidental or conducive to the attainment of the above objects or any of them, or which may be conveniently carried on and done in connection therewith, or which may be calculated directly or indirectly to enhance the value of or render profitable any business or property of the Company.

4. The liability of the members is limited.

The capital of the Company is \$2,500,000, divided into 7,500 preference shares of \$100 each, and 17,500 ordinary shares of \$100 each, with power to increase, subdivide, consolidate, or reduce; such preference shares shall confer the right to a fixed cumulative preferential dividend at the rate of 5 per cent per annum, and shall rank both as regards dividends and capital in priority to the ordinary shares.

The shares forming the capital (original, increased or reduced) of the Company may be divided into such classes with such preferences and other special incidents, and be held on such terms as may be prescribed by the Articles of Association of the Company for the time being or otherwise.

We, the several persons whose names and addresses are subscribed hereto, are desirous of being formed into a Company, in pursuance of this Memorandum of Association, and we respectively agree to take the number of shares in the capital of the Company set opposite our respective names:

Names, addresses, and descriptions of subscribers.	Number of shares taken by each
Ed. L. Lorenz-Meyer, Merchant, Hamburg, by his Attorney, O. Sielcken	One.
Ad. Laspe, Merchant, Hamburg, by his Attorney, O. Sielcken	One.
F. H. Whitthoefft, Merchant, Hamburg, by his Attorney, O. Sielcken	One.
O. Sielcken, Merchant, Penang	One.
A. G. Faber, Merchant, Singapore.....	One.
Ad. Asmus, Merchant, Penang.....	One.
F. Katenkamp, Merchant, Singapore.....	One.

Dated the eleventh day of December, 1905.

Witness to all the above signatures:

E. F. H. EDLIN,
Solicitor, Singapore.

The Government of the Philippine Islands,
 Department of Commerce and Communications,
 Bureau of Commerce and Industry,
 Mercantile Register.

No. 61.

[Seal of the Government of the Philippine Islands.]

Government of the Philippine Islands,
 Executive Bureau.

Division of Archives, Patents, Copyrights, and Trade-marks.

Whereas "Behn, Meyer & Company, Limited," a corporation organized and existing under the laws of the Straits Settlements filed upon the fourth day of February, nineteen hundred and seven, with the Division of Archives, Patents, Copyrights, and Trade-marks, of the Executive Bureau, under and in accordance with the provisions of the Act of the Philippine Commission Numbered Fourteen hundred and fifty-nine, enacted March first, nineteen hundred and six, in force April first, nineteen hundred and six, the statement required by section sixty-eight of said Act and a duly certified copy of the charter of said corporation and an order of the Secretary of Commerce and Police dated the twenty-third day of January, nineteen hundred and seven for the issuance of a license to said corporation to engage in business in the Philippine Islands, copies of which documents are hereto attached;

Now, therefore, By virtue of the powers and duties vested in me by law I do hereby license the said corporation, "Behn,

Meyer & Company, Limited," to engage in such business in the Philippine Islands as the said corporation is authorized to do under its charter and the said order of the Secretary of Commerce and Police and the Act of the Philippine Commission Numbered Fourteen hundred and fifty-nine.

In testimony whereof, I have hereunto set my hand and caused the seal of the Division of Archives to be affixed this fifth day of February, Anno Domini, nineteen hundred and seven.

[SEAL.]

(Sgd.)

M. DE YRIARTE,
Chief of Division.

EXHIBIT B.

UNITED STATES OF AMERICA,
Philippine Islands:

COURT OF FIRST INSTANCE OF MANILA, BRANCH III.

Claim 11061.

Trust 50238.

No. 14757.

BEHN, MEYER & CO., LTD., *Plaintiff,*

vs.

J. S. STANLEY ET AL., *Defendants.*

Order.

This cause came duly on to be heard this 10th day of August, 1922, before the undersigned, Judge of the above entitled court, upon the application of A. N. Jureidini & Bros., one of the defendants above named and judgment creditor in the above entitled cause, for the appointment of a Receiver by this court of the assets and estate of Behn, Meyer & Co., Ltd., plaintiff above named and judgment debtor of said A. N. Jureidini & Bros., said defendant herein, and the court having considered said application and the records and files herein and it appearing to the court therefrom that executions have been issued upon said judgment, both against the plaintiff named and against its bondsmen, and that returns thereon have been made by the Sheriff of Manila showing that no property of said plaintiff or its bondsmen can be found within the jurisdiction of this court to satisfy said judgment herein and that said plaintiff has ceased to actively conduct business within the Philippine Islands and has forfeited its corporate rights so to do and is insolvent and that execution cannot be made against its bondsmen, for

the reason that they and each of them have been deported from the Philippine Islands, and no property of said bondsmen can be found within the Philippine Islands upon which to levy under said execution; and it further appearing that said plaintiff may have assets which might be applied upon the judgment herein if the same be located or brought within the jurisdiction of this court, and in order to protect the judgment creditor herein it is necessary that a Receiver be appointed to collect and preserve the assets and estate of said plaintiff, and being fully advised in the premises

It is now considered and ordered that Lazarus G. Joseph of Manila, Philippine Islands, be and he hereby is appointed Receiver of Behn, Meyer & Co., Ltd., plaintiff above named and judgment debtor herein, its property, assets and estate, with such powers as are prescribed by statute, upon his giving and filing a bond herein in the sum of One Thousand Pesos (₱1,000.00), which may from time to time be increased upon the order of this court.

It is so ordered.

Manila, P. I., August 10, 1922.

(Sgd.)

GEO. R. HARVEY,

Judge.

[Internal-revenue stamp, documentary, 20c. Canceled Aug., 1922.]

Certified correct copy Aug. 19, 1922.

JOSE CASIMIRO,

Acting Clerk of the Court,

By FAUSTINO VENZUELA,

Deputy Clerk.

C. N.

Court of First Instance, Manila, Accounting Division.
Fee Paid, ₱1.10. Official Receipt No. 234,465.

[Endorsed:] For official use only. Property of the Court of First Instance of Manila.

EXHIBIT C.

VISTO. CAL. P.

G. R. No. 22537.

THE UNITED STATES OF AMERICA:

SUPREME COURT OF THE PHILIPPINE ISLANDS.

Court of First Instance of Manila.

No. 14757.

BEHN, MEYER & Co., LTD., *Plaintiff*,

vs.

J. S. STANLEY ET AL., *Defendants*.

LAZARUS G. JOSEPH and A. N. JUREIDINI & Bros., *Appellants*,

vs.

JOHN BORDMAN, J. M. MENZI and THE BANK OF THE PHILIPPINE ISLANDS, *Interveners and Appellees*.

Bill of Exceptions.

Messrs. Schwarzkopf & Ohnick, 178 Juan Luna, Manila, for the Appellants.

Messrs. Crossfield & O'Brien, 34 Escolta, Manila, and Messrs. Hartigan & Welch, Plaza Moraga, Manila, for the Interveners and Appellees.

UNITED STATES OF AMERICA,
Philippine Islands:

IN THE COURT OF FIRST INSTANCE OF MANILA.

Civil. No. 14757.

BEHN, MEYER & CO., LTD., *Plaintiff,*

vs.

J. S. STANLEY ET AL., *Defendants.*

BILL OF EXCEPTIONS.

Be it remembered that on the dates respectively mentioned, the following proceedings were had in the Court of First Instance of Manila, to wit:

A.

That under date of February 24, 1922, a decision was rendered in the above entitled case, as follows:

(Omitting Title and Heading.)

Decision.

This is an action of replevin involving the ownership of seven cases of cotton goods originally shipped from Zurich, Switzerland, via Genoa, about July 24, 1914, on German steamer "Lutzow," consigned to plaintiff, Behn, Meyer & Company, Limited, more particularly described in plaintiff's amended complaint and in A. N. Jureidini & Bros.' answer and cross complaint.

At the outbreak of war between Germany and Great Britain in August, 1914, while *en route* to Manila, the said

steamer "Lutzow" sought refuge in the Suez Canal. The Turkish authorities ordered that said steamer should leave the Suez Canal and it was captured on the high seas by British naval forces and its cargo was landed at Port Said, Egypt. The said seven cases of cotton goods were on November 19, 1915, condemned, confiscated as lawful prize in His British Majesty's Supreme Court for Egypt, sitting at Alexandria, with Vice Admiralty Jurisdiction in prize, and were sold by the British Government at public auction to one Guido Pepe, who sold the said goods to A. N. Jureidini & Bros. of Cebu, P. I., payment therefore to be made upon delivery in Cebu. The goods were shipped by said Guido Pepe through the Egyptian Bonded Warehouses Co., Ltd., to H. B. M. British Consul for A. N. Jureidini & Bros., Cebu, P. I. (via. Manila), on the Compañia Transatlantica steamship "C. de Eizaguirre" (Exhibits A-1 and A-2). The merchandise arrived at Manila on said steamer about January 20, 1917, and while the goods were still under control of the Compañia Transatlantica de Barcelona and in the custody of the Insular Collector of Customs the plaintiff, Behn, Meyer & Co., brought this action and obtained possession of said merchandise under a writ of replevin.

This action was originally brought against the Insular Collector of Customs and the Compañia Transatlantica de Barcelona. The Insular Collector of Customs disclaimed any special interest in the goods except for the collection of the duties thereon. A. N. Jureidini & Bro., first filed a complaint in intervention claiming the ownership of the goods. Later Behn, Meyer & Co. filed an amended complaint and made said A. N. Jureidini & Bros., the Egyptian Bonded Warehouses Co., Ltd., and the British Consul at Cebu parties defendant, and A. N. Jureidini & Bros., in its answer and cross complaint alleged that in or about the month of September, 1916, the said goods were sold at Alexandria, Egypt, having been declared and adjudicated

as prize by His Britanic Majesty's Prize Court in that jurisdiction, the said goods having been property of certain German subjects and public enemies of the British Empire and its Government and found and seized by British men-of-war on an enemy ship on the high seas after declaration of war between the Government of the British Empire and the German Empire; that said goods at said sale were bought by one Guido Pepe, who, on or about November 18, 1916, sold them to A. N. Jureidini & Bros. for the sum of ₱2,000.00; that on or about December 18, 1916, the said goods were shipped by said Guido Pepe through the Egyptian Bonded Warehouses Co., Ltd., an Egyptian corporation, from Port Said, Egypt, and placed on board the S. S. "C. de Eizaguirre," of the defendant Compañia Transatlantica de Barcelona, at the custom house in Manila, for shipment to Cebu, P. I.; that on or about January 28, 1917, while the said goods were so deposited in the custom house in Manila, plaintiff took the said goods from the control of the said Compañia Transatlantica de Barcelona who made the delivery thereof to plaintiff without any right so to do, thus unlawfully depriving defendant A. N. Jureidini & Bros. of the said goods, the bills of lading of which have been indorsed to said A. N. Jureidini & Bros. by J. T. Knowles, His Britanic Majesty's Vice Consul at Cebu, P. I.; that at the time plaintiff took said goods, as above stated, they were worth about ₱10,000.00 in the city of Manila, P. I., and that A. N. Jureidini & Bros. are damaged in the sum of ₱8,000.00, more or less, and said defendant prays that plaintiff's complaint be dismissed, and that judgment be rendered against the plaintiff and the Insular Collector of Customs and the Compañia Transatlantica de Barcelona, ordering them to deliver immediately to said A. N. Jureidini & Bros. the possession of said goods and merchandise and to pay to said A. N. Jureidini & Bros., jointly and severally, the sum of ₱8,000.00, as damages, and for the additional sum of ₱2,000.00 in

case said parties should fail to make such delivery of said goods.

The Compañia Transatlantica de Barcelona, in its answer, asks that the bills of lading for the shipment of the merchandise in question on the "Code Eizaguirre" be produced and demands payment of the sum of ₧5.50 for the unlading, discharge, and landing of said merchandise.

The evidence shows that at the time of the capture by the British naval forces of the said German steamer "Lutzow" the said merchandise in question was the property of plaintiff, Behn, Meyer & Co., and the validity of the claim of A. N. Jureidini & Bros. depends entirely upon the British Prize Court proceedings, which proceedings could not be produced by A. N. Jureidini Bros. at the time of the first trial of this case, but it was made to appear that there had been prize court proceedings as to said cargo at Alexandria, Egypt, and the trial court overruled a motion to be allowed time to obtain a certified copy of the judgment of the prize court, and on February 28, 1918, rendered judgment in favor of plaintiff, Behn, Meyer & Co. Defendant A. N. Jureidini & Bros. appealed to the Supreme Court of the Philippine Islands, which held that the interests of justice required a new trial and the defendant (A. N. Jureidini & Bros.) be granted a reasonable time in which to obtain a duly certified copy of the decision of the Admiralty Court of Alexandria, Egypt, in which it was declared that the seven cases of cotton goods constituted lawful prize.

At the second trial of this case, recently, the plaintiff offered the evidence taken at the first trial, and defendant A. N. Jureidini & Bros. offered all the testimony and documentary evidence received in the first trial. Said defendant also produced, identified and offered in evidence a certified copy of the decision rendered by the British Vice Admiralty Court in Alexandria, Egypt (Exhibit R). This certified copy was objected to by plaintiff upon the ground that it is not authenticated as required by law or the rules of evidence, and

for the further reason that it is irrelevant as not tending in any way to be connected with the subject-matter of this action. Ruling on this objection was reserved. It is contended by counsel for said defendant that the decision contained in Exhibit R is duly authenticated by the Presiding Judge of the Court who rendered the said decision, and the signature of said Judge is authenticated by the American Consul at Alexandria, Egypt; that this court will take judicial notice of the official seal of the Admiralty Courts all over the world; that, as thus authenticated, said Exhibit R complies without laws, and that the decision refers precisely to the goods involved in this case.

The authentication of said Exhibit R may not be in the precise form that this court would like to have it, but in the opinion of the court it is legally sufficient, and the certified copy (Exhibit R), shows on its face that it refers to the seven cases of cotton goods involved in this case. Therefore, the objections are overruled.

The certified copy, Exhibit R, is a decision in H. B. M. Supreme Court for Egypt, Vice Admiralty Jurisdiction in prize and relates to residue of cargo ex S. S. "Lutzow," and it appears therefrom that on the 19th day of November, 1915, before His Honor Judge Grain, the judgment was entered as follows:

"Upon hearing the evidence and upon hearing His Majesty's Procurator on behalf of the Crown, it is ordered

"That the part cargo ex S/S 'Lutzow' of which particulars are given below be pronounced to have belonged at the time of seizure thereof to enemies of the Crown and as such or otherwise subject and liable to confiscation.

Particulars of Cargo.

BMC.

C.

4006.	No. 1.....	1 case cotton goods
4216.	2.....	1 " "
4386.	2.....	1 " "
4217.	2.....	1 " "

M.

2238.	3.....	1 " "
2248.	2.....	1 " "
2161.	2.....	1 " "

7 In all seven cases.

By order of the Court.

(Sgd.)

EDWARD LAFERLA,

Register."

The following certificate is written at the foot of said judgment:

"The fifteenth day of June, 1920, I, Linton Theodore Thorp, Judge of His Britannic Majesty's Supreme Court for Egypt, Vice Admiralty Jurisdiction in Prize, do hereby certify that Edward Laferla is the Registrar of this Court and that he has signed this certificate and that the attestation is in due form.

(Sgd.)

LINTON T. THORP,

Judge."

Attached to said certified copy is a certificate of the Vice-Consul of the United States of America at Alexandria, Egypt, "that Linton T. Thorp is the Judge of His Britannic Majesty's Supreme Court for Egypt, Vice Admiralty Jurisdiction in Prize," and "that to the best of my knowledge and belief

his signature appearing upon the attached document is genuine and that to his official acts full faith and credit are due."

It is an admitted fact that the steamship "Lotzow" was a German ship belonging to the North German Lloyd when she was on this voyage at the time that war broke out in 1914 between Great Britain and Germany, and the court is of the opinion that the ship and all cargo thereon belonging to Germans was subject to capture by British forces. Great Britain has had military occupation of Egypt since 1882 (Lawrence, *Principles of International Law*, 6th Ed., p. 477), and this court takes judicial notice of the fact that during the recent world war Great Britain declared and considered Egypt as part of the British Empire.

The court has no doubt as to the right of the British naval forces to capture and seize the German ship "Lutzow" and to confiscate as prize her German-owned cargo after the declaration of war in 1914 between Great Britain and Germany. The court knows from Exhibit R that there is a British Supreme Court of Egypt, sitting at Alexandria, with Vice Admiralty Jurisdiction in prize, and that the said court conducted judicial proceedings for the confiscation of the seven cases of cotton goods involved in this case. There is every presumption of the regularity of said prize court proceedings, and said prize court proceedings will be given effect by this court, in the absence of any showing of irregularity which deprived that court of jurisdiction over said goods.

Plaintiff's Exhibit M, which is the affidavit attached to the original complaint, shows the value of said goods in January, 1917, to have been approximately ₧3,500.00, and A. N. Jureidini testified that the value was ₧4,700.00.

The court therefore finds from the evidence that the seven cases of cotton goods in question were seized by Great Britain on the German steamship "Lutzow" during a state of war between Great Britain and Germany; that prize court proceedings were conducted in the Supreme — of Egypt at Alexandria, with Vice Admiralty Jurisdiction in prize; that

said goods were sold at public auction and bought by one Guido Pepe, who sold them to defendant A. N. Jureidini & Bros., to whom said Guido Pepe consigned said goods through the British Vice-Consul at Cebu, and that said A. N. Jureidini & Bros. hold the bills of lading therefor duly indorsed by His Britannic Majesty's Vice-Consul, J. T. Knowles, of Cebu; that plaintiff, Behn, Meyer & Co., lost all right and interest in said goods by capture and confiscation in time of war and sold the goods to Guido Pepe, who in turn sold them to A. N. Jureidini & Bros., to whom they were duly consigned by proper bills of lading, and that plaintiff had no legal right to take possession of said goods and receive them from the Insular Collector of Customs, and for having unlawfully taken possession of said goods plaintiff rendered itself liable to the rightful claimant under the bills of lading for any damages caused by such wrongful act. The indorsement of the bills of lading for said goods J. T. Knowles, British Vice-Consul at Cebu, and by Guido Pepe (Exhibit N) to A. N. Jureidini & Bros. entitled the latter to the possession of the goods against the plaintiff.

In view of the foregoing considerations, the court finds that defendant, A. N. Jureidini & Bros., is entitled to recover from plaintiff the seven cases of cotton goods in question in good condition or the highest value thereof from the date they were wrongfully taken by plaintiff until notice was received by A. N. Jureidini & Bros. in March, 1917, which value for the purposes of this case, the court finds was ₱3,500.00.

Therefore, judgment is hereby rendered dismissing plaintiff's complaint and absolving defendants from the demands of plaintiff, and in favor of defendant A. N. Jureidini & Bros. and against plaintiff, Behn, Meyer & Co., for the immediate delivery to said A. N. Jureidini & Bros. of the possession of said seven cases of cotton goods and merchandise, and to pay to said A. N. Jureidini & Bros. the sum of ₱1,500.00, as damages, and to pay the costs of said A. N.

Jureidini & Bros.; and it is further ordered that if the said Behn, Meyer & Co. shall fail to make delivery of said merchandise to A. N. Jureidini & Bros., the said Behn, Meyer & Co. shall pay to defendant A. N. Jureidini & Bros. in addition to said sum of ₱1,500.00, the sum of One Thousand Nine Hundred and Eighty-eight Pesos (₱1,988.00), the original cost of said A. N. Jureidini & Bros. of said goods.

The court finds that the Insular Collector of Customs had no legal right to deliver the said goods to plaintiff without the presentation and surrender of the bill of lading properly indorsed, and plaintiff did not hold the proper bill of lading and the Insular Collector of Customs would not deliver the goods to plaintiff until compelled to do so by order of a court of competent jurisdiction, and therefore the Insular Collector of Customs cannot be held responsible in any way to A. N. Jureidini & Bros. for such wrong delivery.

Therefore, the amended complaint is dismissed as against the Insular Collector of Customs, the Compañia Transatlantica de Barcelona, the Egyptian Bonded Warehouse Co., Limited, and J. T. Knowles, as His Britannic Majesty's Vice-Consul at Cebu, P. I., with their costs against plaintiff, and judgment is ordered in favor of the said Compañia Transatlantica de Barcelona and against A. N. Jueridini & Bros. for Five and 60/100 Pesos (₱5.60) for unlading, discharging, and landing of said merchandise.

It is so ordered.

Manila, P. I., February 24, 1922.

(Sgd.)

GEO. R. HARVEY,

Judge.

B.

That thereafter, on or about April 6, 1922, a writ of execution was issued upon the judgment rendered in the above entitled case, but said writ of execution was returned unsatisfied on April 8, 1922. On June 8, 1922 an alias execution was issued upon the same judgment but same was likewise returned unsatisfied on June 14, 1922.

C.

Under date of August 8, 1922, the following application for the appointment of a receiver was submitted ex parte to the court in the above entitled cause.

(Omitting Title and Heading.)

Application for Appointment of Receiver.

Comes now your petitioner, A. N. Jureidini & Bros. judgment creditor in the above entitled cause, by and through their undersigned counsel, and respectfully represents to this Honorable Court:

1. That judgment was entered in the above entitled cause on the 24th day of February, 1922, in favor of your petitioner and against the plaintiff above named in the sum of ₱1,500.00, as damages, and in the further sum of ₱1,988.00 in the event that said plaintiff failed to make delivery described in said judgment to your petitioner, as appears from the decision of this Honorable Court rendered on the date aforesaid and from the records and files herein.

2. That no motion for new trial was made in said proceedings after said judgment and no notice of appeal given, nor was any appeal taken from said judgment and the same now is and long since has been and become final.

3. That subsequent to the finality of said judgment and on or about the 6th day of April, 1922, execution was issued by this Honorable Court upon said judgment, directed against said plaintiff; that thereafter and on or about the 12th day of April, 1922, the Sheriff of Manila made return upon said execution to the effect that no property of plaintiff could be found within the jurisdiction of this Court, as appears from said execution and the return thereon, records

and files of this cause; that thereafter and on or about the 8th day of June, 1922, an alias execution was issued upon said judgment, directed against the bondsmen of said plaintiff, and thereafter and on or about the 20th day of June, 1922, the Sheriff of Manila made return upon said alias execution to the effect that the bondsmen of said plaintiff had, prior to the issuance of said execution, been deported from the Philippine Islands and prior to their deportation had sold all their property into cash and that no property of said bondsmen could be found within the jurisdiction of this Court.

4. That at the time of the institution of the above entitled action and prior and subsequent thereto, plaintiff above named was a foreign corporation, authorized to do and doing business within the Philippine Islands, and having its principal place of business in the City of Manila therein, during said times conducted a large and substantial commercial business.

5. That your petitioner is informed and believes and so states the fact to be that the plaintiff above named, the judgment debtor herein, has subsequent to the institution of the above action, but prior to the rendition of final judgment herein, ceased to actively conduct its business within the Philippine Islands and has forfeited its corporate rights so to do and is involvent, but has within the Philippine Islands and within the jurisdiction of this Court sufficient assets, consisting of various and divers interest in properties and choses in action, to satisfy the judgment herein, but that the same cannot be secured to be applied upon the judgment herein without the appointment of a Receiver to collect and preserve said assets and unless a Receiver is appointed herein to so collect and preserve the assets of said judgment debtor, the plaintiff herein, the judgment of your petitioner will be and become wholly worthless and of no avail.

Wherefore your petitioner prays that a Receiver be appointed by this Honorable Court to take charge of the estate and effects of said Behn, Meyer & Co., Ltd., judgment debtor herein, and plaintiff above named, and to collect the debts and property due it and to pay the outstanding debts thereof and to divide the money and other properties that shall remain over among the stockholders or members, and for such other and further relief as the Court may deem just and equitable in the premises.

Manila, P. I., August 8, 1922.

SCHWARZKOPF & OHNICK,
By SYDNEY C. SCHWARZCOPF,
Attorneys for A. N. Jureidini & Brothers.

178 Juan Luna, Manila.

UNITED STATES OF AMERICA,
Philippine Islands,
City of Manila, ss:

A. N. Jureidini, being first duly sworn, upon oath states that he is the President and manager of A. N. Jureidini & Brothers, the petitioner above named, and makes this affidavit in verification of the within and foregoing application; that he has read said application, knows the contents thereof, and believes the same to be true.

(Sgd.)

A. N. JUREIDINI.

Subscribed and sworn to before me this 10th day of August, 1922. Affiant exhibited his Cedula No. F-13064, issued at Manila, P. I., Jan. 20, 1922.

(Sgd.)

BENJ. S. OHNICK.

Reg. 92, p. 24, bk. 1922.

D.

Under date of August 10, 1922, the following order was entered in the above entitled case, whereby Lazarus G. Joseph was appointed Receiver of Behn, Meyer & Co., Ltd.

(Omitting Title and Heading.)

Order.

This cause came duly on to be heard this 10th day of August, 1922, before the undersigned, Judge of the above entitled court, upon the application of A. N. Jureidini & Bros., one of the defendants above named and judgment creditor in the above entitled cause, for the appointment of a Receiver by this court of the assets and estate of Behn, Meyer & Co., Ltd., plaintiff above named and judgment debtor of said A. N. Jureidini & Bros., said defendant herein, and the court having considered said application and the records and files herein and it appearing to the court therefrom that executions have been issued upon said judgment, both against the plaintiff named and against its bondsmen, and that returns thereon have been made by the Sheriff of Manila showing that no property of said plaintiff or its bondsmen can be found within the jurisdiction of this court to satisfy said judgment herein and that said plaintiff had ceased to actively conduct business within the Philippine Islands and has forfeited its corporate rights so to do and is insolvent and that execution cannot be made against its bondsmen, for the reason that they and each of them have been deported from the Philippine Islands, and no property of said bondsmen can be found within the Philippine Islands upon which to levy under said execution; and it further appearing that said plaintiff may have assets which might be applied upon said judgment herein if the same be located or brought within the jurisdiction of this court, and in order to protect the judgment creditor herein it is necessary that a Receiver be appointed to collect and preserve the assets and estate of said plaintiff, and being fully advised in the premises;

It is now considered and ordered that Lazarus G. Joseph of Manila, Philippine Islands, be and hereby is appointed

Receiver of Behn, Meyer & Co., Ltd., plaintiff above named and judgment debtor herein, its property, assets and estate, with such powers as are prescribed by statute, upon his giving and filing a bond herein in the sum of One Thousand Pesos (₱1,000.00), which may from time to time be increased upon the order of this court.

It is ordered.

Manila, P. I., August 10, 1922.

(Sgd.)

GEO. R. HARVEY,

Judge.

E.

That on August 10, 1922, Lazarus G. Joseph, having posted a bond in the sum ₱1,000.00 as required by the Court, took his oath of office as Receiver of Behn, Meyer & Co., Ltd.

F.

Under date of September 5, 1923, Lazarus G. Joseph as Receiver of Behn, Meyer & Co., Ltd., filed the following petition:

(Omitting Title and Heading.)

Petition.

To the Honorable Judge of the above entitled Court:

Comes now your petitioner, Lazarus G. Joseph, as Receiver of Behn, Myer & Co., Ltd., and respectfully represents to this Honorable Court and shows:

That he is the duly qualified and acting Receiver of Behn, Meyer & Co., Ltd., under appointment of this Honorable Court; that one J. M. Menzi, a resident of the City of Manila, was during the years 1918-1919, a Director, Manager and stockholder of said Behn, Meyer & Co., Ltd., **he being the last known Director and Manager of said Behn, Meyer & Co.,**

Ltd., within the Philippine Islands; that said J. M. Menzi has in his possession or under his control all the books of account of said Behn, Meyer & Co., Ltd.; that your Receiver is entitled to the possession of the same and the same are necessary for the proper conduct of the Receivership and the proper winding up of its affairs in the above proceedings; that your Receiver has demanded the possession of said books of account from said J. M. Menzi, but said Menzi has failed, refused and neglected to turn over the same or any part thereof to your Receiver, and still fails, neglects and refuses so to do.

And now thereupon your receiver respectfully petitions the Court that an order enter herein directing said J. M. Menzi to be and appear before this Court at a time to be fixed in said order, there and then to show cause, if any he has, why he should not turn over and deliver unto your Receiver said books of account and the whole thereof.

Manila, September 5, 1923.

SCHWARZCOPF & OHNICK,
By BENJ. S. OHNICK,
Attorney for Petitioner.

Wise Bldg., 178 J. Luna, Manila, P. I.

PHILIPPINE ISLANDS,
City of Manila, ss:

Lazarus G. Joseph being first duly sworn upon oath, deposes and says: That he is the petitioner named in the within and foregoing petition; that he has read said petition, knows the contents thereof, and that the same is true as he verily believes.

(Sgd.)

LAZARUS G. JOSEPH.

Subscribed and sworn to before me this 5th day of September, 1923, affiant exhibiting to me his cedula No. F-2503, issued at Manila, P. I., on January 2, 1923.

(Sgd.)

MACARIO PERALTA,

Notary Public.

My Commission expires December 31, 1924.

No. 232, pg. 6, bk. 1923.

G.

On the same date, September 5, 1923, the Court, after considering the above petition, entered the following order:

(Omitting Title and Heading.)

Orden.

Dada cuenta de la petición presentada en el día de hoy por Lazarus G. Joseph, como depositario de "Behn, Meyer & Co., Ltd.," por medio de sus abogados Schwarzkopf & Ohnick, solicitando que se expida una orden disponiendo la comparecencia de J. M. Menzy para que exponga sus razones, si alguna tuviera, por qué no ha de ser ordenado para hacer entrega de todos los libros de cuentas pertenecientes a "Behn, Meyer & Co., Ltd.," a dicho Lazarus G. Joseph, como Depositario de dicha entidad.

Por la presente, se ordena que dicho J. M. Menzy comparezca ante este Juzgado el día 7 de los corrientes, a las tres de la tarde, para exponer sus razones por qué no ha de ser ordenado al efecto a entregar y poner a disposición del depositario Lazarus G. Joseph los libros de cuentas en cuestión, pertenecientes a la entidad "Behn, Meyer & Co., Ltd."

Así se ordena.

Manila, I. F., 5 de Septiembre de 1923.

(Sgd.)

ANACLETO DIAZ,

Juez.

H.

Under date of September 13, 1923, J. M. Menzi presented the following answer to the order to show cause:

(Omitting Title and Heading.)

Answer of J. M. Menzi to Order to Show Cause.

Comes now J. M. Menzi, and in answer to the order of this Honorable Court of September 5, 1923, to show cause why he should not deliver to one Lazarus G. Joseph, the alleged receiver of Behn, Meyer & Co., Ltd., in this case, the books of account of the said Behn, Meyer & Co., Ltd., which are now in his possession, to the Court respectfully states:

That on the 16th day of February, 1918, all the business and assets of the firm of Behn, Meyer & Co., Ltd., in the Philippine Islands were taken over by the Alien Property Custodian of the United States of America under and in accordance with the provisions of the Trading with the Enemy Act, and by direction of said Alien Property Custodian one W. D. Pemberton was appointed and placed in full charge of said business and assets, as receiver thereof, as shown by the letter, a copy of which is attached hereto, marked Exhibit "A," and made a part hereof;

That the business and assets of the said Behn, Meyer & Co., Ltd., including all accounts receivable, *together with* all vouchers, entries and other proofs of the indebtedness, including the books of account now in question, were completely liquidated and sold to Mr. John Bordman by the direction and under the supervision of the said Alien Property Custodian in accordance with the provisions of the Alien Enemy Act, for the sum of ₱660,000.00, as shown by the letters and bills of sale, copies of which are attached hereto, marked Exhibits "B," "C," "D" and "E" and made a part hereof;

That the proceeds of said liquidation of the business and assets of the said firm of Behn, Meyer & Co., Ltd., in the sum of ₱392,674.96 was turned over by the said W. D. Pemberton to the Alien Property Custodian of the United States, as shown by the receipt attached hereto, marked Exhibit "F," and made a part hereof, and is now in his possession;

That on the 1st day of August, 1923, the said Lazarus G. Joseph made a demand on him to deliver to him the said books of account of Behn, Meyer & Co., Ltd., and was duly informed in answer to said demand of the facts hereinbefore stated, as shown by the letters, copies of which are attached hereto as Exhibits "G" and "H," and made a part hereof;

That the said John Bordman is not now in the Philippine Islands, and the said books of account which now belong to him were left in his possession to be used in the collection of said accounts receivable which were purchased by the said Bordman from the Alien Property Custodian, as hereinbelow stated;

That the said Lazarus G. Joseph is not the legally appointed Receiver for the business and assets of the said firm of Behn, Meyer & Co., Ltd., in the Philippine Islands, as the Court under the express provisions of the Trading with the Enemy Act had no jurisdiction to appoint a receiver for such business and assets under the facts hereinbefore alleged, and the order making such appointment is absolutely void;

That on the trial of the case No. 23710, of this Court, entitled Lazarus G. Joseph, Receiver of Behn, Meyer & Co., Ltd., vs. The Hamburg Amerika Line, the said Books of Account of Behn, Meyer & Co., Ltd., were presented in Court as evidence, and at that time the said Receiver through his counsel moved the Court to require him to deliver said books to the said Joseph and for the reason above stated the Court denied such motion;

That the said Joseph, alleging himself to be the duly appointed receiver of the business and assets of the firm of Behn, Meyer & Co., Ltd., in the Philippine Islands, has brought an

action against him, the said J. M. Menzi, the said John Borman, and the Bank of the Philippine Islands, for the purpose of attempting to set aside the said bills of sale for the said business and assets, including said books of account, and to recover the same, which said action is now pending in this Court, being No. 24892, of this Court.

That the said Joseph has brought this matter up now before this Court with full knowledge of the foregoing facts, and knowing that he has no right whatever to said books of account, and for the sole purpose of unduly molesting and troubling him, the said J. M. Menzi, without any reason whatever to do so.

Wherefore the said J. M. Menzi prays the Court for the reasons hereinbefore stated that the motion of the said Joseph that the books of account of the business of Behn, Meyer & Co., Ltd., be delivered to him, be denied, and that he have his costs in relation to this proceeding, and for such other and further relief as to the Court may seem proper in the premises.

Manila, P. I., September 13, 1923.

(Sgd.)

J. M. MENZI.

UNITED STATES OF AMERICA,

Philippine Islands,

City of Manila, ss:

J. M. Menzi, after first being duly sworn upon oath, deposes and says: That he is the person who signed the foregoing answer, and that he knows the contents thereof, and that the allegations contained therein are true, according to the best of his knowledge and belief.

(Sgd.)

J. M. MENZI.

Subscribed and sworn to before me, this 15th day of September, 1923. Affiant exhibited to me his Cedula No. F-3577, issued at Manila, January 3, 1923.

(Sgd.)

JOSE RECUENCO,

Clerk of Court.

EXHIBIT "A."

Office of the Alien Property Custodian, Room No. 214,
Masonic Temple Building, Manila.

February 16, 1918.

GENTLEMEN: You are hereby informed that Mr. W. D. Pemberton has been appointed receiver of Behn, Meyer & Co., Ltd., and will assume charge of the business and assets of said firm as a going concern, submitting weekly reports to the undersigned.

By direction of A. Mitchell Palmer, Esq.

Respectfully,

(Sgd.) FRANCIS BURTON HARRISON,
Managing Director for the Philippine Islands.

Messrs. Behn, Meyer & Co., Ltd., Manila.

EXHIBIT "B."

UNITED STATES OF AMERICA:

The Alien Property Custodian, Office of the Managing
Director in the Philippine Islands, Manila.

January 2, 1919.

DEAR SIR: A license authorizing the complete liquidation of the business of Behn, Meyer & Co., Ltd., in the Philippine Islands was granted by the War Trade Board of the United States to the company under date of March 19, 1918. I am authorized to state to you that it is the desire of this office that the liquidation be completed under this license without further delay by you, acting under your power of attorney from the Company. The liquidation should be effected by Public sale held on approximately

two weeks' advertisement. Otherwise the license will be revoked and the property sold at Public sale to produce the same effect, by this office under the Trading with the Enemy Act.

Yours very truly,
(Sgd.) DOUGLAS M. MOFFAT,
Managing Director for the Philippine Islands.

EXHIBIT "C."

UNITED STATES OF AMERICA:

The Alien Property Custodian, Office of the Managing
Director in the Philippine Islands, Manila.

January 23, 1919.

DEAR SIR: Referring to our letter to you of the second inst., I am further authorized to state to you that it is the desire of this office that the accounts receivable, belonging to the business of Behn, Meyer & Co., Ltd., in the Philippines, be sold by you, acting under your power of attorney from the Company and under the license for the liquidation of the business of Behn, Meyer & Co., Ltd., granted by the War Trade Board of the United States. This sale may be made with our approval by private sale to Mr. John Bordman, who was the purchaser of the assets of the business at public sale thereof held by you, provided you find his to be the best offer obtainable. Otherwise, the license will be revoked and the accounts receivable sold by this office under the Trading with the Enemy Act.

Yours very truly,
(Sgd.) DOUGLAS M. MOFFAT,
Managing Director for the Philippine Islands.

Mr. J. M. Menzi, Manila, P. I.

EXHIBIT "D."

Whereas, the undersigned, Behn, Meyer & Company, Ltd., was granted license No. Et-11291 dated March 19, 1918, by the War Trade Board of the United States of America, pursuant to the provisions of the Act of Congress approved October 6, 1917, known as the "Trading with the Enemy Act," the terms and conditions of which License are as follows.

"License is hereby granted to Behn, Meyer & Company, Ltd., a corporation organized under the laws of Straits Settlements, and doing business in the Philippine Islands, to perform such acts as may be necessary to continue the business of the said Behn, Meyer & Co., Ltd., or in the alternative to perform such act as may be necessary for a complete sale, liquidation and disposition of the business; assets and property of the said Behn, Meyer & Co., Ltd., according as it may be seen advisable to the Alien Property Custodian that the business of Behn, Meyer & Co., Ltd., should continue or should be liquidated, sold and disposed of; and in the course of performing such acts to trade with any person, firm or corporation, except an 'enemy' or 'ally of enemy' not holding a license granted under the Trading with the Enemy Act or any person acting on behalf of, or for the benefit of, such 'enemy' or 'ally of enemy.'

"Provided, however, that the license may in the discretion and at the direction of the Alien Property Custodian collect, under the supervision of the Alien Property Custodian, any sums due from an 'enemy' 'or on' 'ally of enemy' or person acting for, or on behalf of an 'enemy' or 'ally of enemy.'

"It is a term and condition of this license that:

"(1) All acts performed hereunder shall be carried out under the direction and supervision of the

Alien Property Custodian and in accordance with such plan and method as may be desired by the Alien Property Custodian, and all expenses of such direction and supervision shall be borne by the licensee;

"(2) The licensee shall transfer to the Alien Property Custodian as the said Alien Property Custodian may require, the proceeds of any liquidation, sale, and disposition, which may occur as aforementioned, either at the termination of the said liquidation, sale and disposition, or from time to time during the course thereof;

"(3) A report of the progress of such liquidation, sale and disposition shall be made to the Alien Property Custodian and to the War Trade Board at the end of each calendar month or oftener if required.

"And license is hereby granted to all persons in the United States to participate with Behn, Meyer & Co., Ltd., in any acts which this license may authorize the said Behn, Meyer & Co., Ltd., to undertake.

Now, therefore, these presents witness that by virtue of the foregoing license, and in consideration of the sum of Six Hundred Thousand Pesos (P600,000.00) Philippine Currency, to it paid by John Bordman of Iloilo, Philippine Islands, the receipt whereof is acknowledged, does hereby sell and convey to said John Bordman, his executors, administrators and assigns, the following property, to wit:

(1) The entire stock of Textiles, Sundries, Drugs, Hardware and Chucherias in its branches located in Manila and Cebu, Philippine Islands, as per Schedule "A" hereto attached.

(2) All furniture and fittings as per Schedule "B" hereto attached.

(3) That parcel of land situated in the City of Baguio, Philippine Islands (Lot Number 16, in Residence Section "D") consisting of 9307.24 square meters, of which Behn, Meyer & Co., Ltd., is the registered owner, its title thereto being evidence by Torrens Certificate No. 247 in the land records of the City of Baguio.

(4) Trademarks as per Schedule "C" hereto attached belonging to the business of Behn, Meyer & Co., Ltd., in the Philippine Islands.

(5) The leasehold interest held by Behn, Meyer & Co., Ltd., in the Philippine Islands, Goodwill in this connection shall be understood to include all cable codes, cuts, electroplates; customer lists and all other accessories to enable the buyer to conduct the business in its accustomed way.

Neither the undersigned nor the United States nor the Alien Property Custodian nor any representative, or agent, or agency thereof, shall be held or admitted to make any representation or guaranty, express or implied, concerning or in any way respecting such property or business, or any information concerning the same.

This sale has been made under the supervision and with the approval of the Alien Property Custodian, and in accordance with the terms and conditions of the aforesaid license.

Signed at Manila, Philippine Islands, this 23rd day of January, 1919.

BEHN MEYER & CO., LTD.,
By J. M. MENZI,
Manager.

Signed in the presence of:

P. A. BEAMAN.

J. M. C. DE JESUS.

Acknowledgment.

UNITED STATES OF AMERICA,
Philippine Islands:

In the City of Manila, on this 23rd day of January, 1919, personally appeared J. M. Menzi, known to me to be the same person who executed the foregoing instrument and acknowledged the same to be his free act and deed. Said Mr. Menzi exhibited his Cedula F-11441 issued at Manila, P. I., on January 16, 1919.

Before me,

S. W. O'BRIEN,
Notary Public.

My commission expires December 31, 1920.
 Notarial Register No. 41, P. 98, Book 4.

(20¢ Int. Rev. Stamp.)

Approved:

A. MITCHELL PALMER,
Alien Property Custodian,
 By DOUGLAS M. MOFFAT,
Managing Director for the Philippine Islands.

CITY OF MANILA,
Philippine Islands, ss:

In the City of Manila on this 23rd day of January, 1919, personally appeared Douglas M. Moffat known to me to be the same person who executed the foregoing instrument and acknowledged the same to be his free act and deed. Said Mr. Moffat did not exhibit any cedula being exempt from this tax on account of his being a non-resident of and temporality in these Islands.

Before me,

S. W. O'BRIEN,
Notary Public.

My commission expires December 31, 1920.

Notarial Register No. 42, p. 92, book 4.

(20¢ Int. Rev. Stamp.)

I, S. W. O'Brien, a notary in and for the city of Manila, Philippine Islands, hereby certify that the foregoing is a true and correct copy of the original thereof, which was acknowledged before me on the 23rd day of January, 1919, and with which I have compared it.

In witness whereof, I hereunto set my hand and affixed my notarial seal, this 22nd day of March, 1924.

(Sgd.)

S. W. O'BRIEN,

Notary Public.

My commission expires December 31, 1924.

Notarial Register No. 39, page 73, book VI.

EXHIBIT "E."

Whereas the undersigned Behn, Meyer & Company, Ltd., was granted License No. ET-11291 dated March 19, 1918, by the War Trade Board of the United States of America, pursuant to the provisions of the Act of Congress approved October 6, 1917, known as the "Trading with the Enemy Act," the terms and conditions of which license are as follows:

"License is hereby granted to Behn, Meyer & Company, Ltd., a corporation organized under the laws of Strait Settlements, and doing business in the Philippine Islands, to perform such acts as may be necessary to continue the business of the said Behn, Meyer & Company, Ltd., or the alternative, to perform such acts as may be necessary for a complete sale, liquidation, and disposition of the business, assets, and property of the said Behn, Meyer & Co., Ltd., according as it may seem advisable to the Alien Property Custodian that the business of Behn, Meyer & Co., Ltd., should continue or should be liquidated, sold and disposed of; and in the course of performing such

acts to trade with any person, firm or corporation, except an 'enemy' or 'ally of enemy' not holding a license granted under the Trading with the Enemy Act, or a person acting on behalf of, or for the benefit of such an 'enemy' or 'ally of enemy.'

"Provided, however, that the license may in the discretion and at the direction of the Alien Property Custodian collect, under the provision of the Alien Property Custodian, any sums due from an 'enemy' or 'ally of enemy' or person acting for, or in behalf of, an 'enemy' or 'ally of enemy.'

"It is a term and condition of this license that:

"(1) All acts performed hereunder shall be carried out under the direction and supervision of the Alien Property Custodian, and in accordance with such plan and method as may be desired by the Alien Property Custodian, and all expenses of such direction and supervision shall be borne by the licensee;

"(2) The licensee shall transfer to the Alien Property Custodian as the said Alien Property Custodian may require, the proceeds of any liquidation, sale, and disposition, which may occur as aforementioned, either at the termination of the said liquidation, sale and disposition, or from time to time during the course thereof;

"(3) A report of the progress of such liquidation, sale and disposition shall be made to the Alien Property Custodian and to the War Trade Board at the end of each calendar month or oftener if required.

"And License is hereby granted to all persons in the United States to participate with Behn, Meyer & Co., Ltd., in any acts which this license may authorize the said Behn, Meyer & Co., Ltd., to undertake."

Now, therefore, these presents witness that by virtue of the foregoing license, and in consideration of the sum of Sixty Thousand Pesos (₱60,000.00) Philippine Currency, to it paid by John Bordman of Manila, Philippine Islands, the receipt of which is acknowledged, does hereby sell and convey to said John Bordman, his executor, administrators and assigns, the following accounts receivable, together with all vouchers, entries and other proofs of the indebtedness, to wit: Charge Note No. 967 re "Sachsen" Hbg/₱4.40; E. Meyer & Co. Tientsin ₱2.52; Commercial Pacific Cable Co., Manila, ₱177.36; E. Engler, Saigon, ₱50.00; R. Wesener, Tientsin, ₱30.18; Julius Norden, Hamburg ₱48.87; Thoresen & Co., Shanghai, ₱0.56; Speidel & Co., Saigon, ₱7.09; Capt. Hehenga, P/War ₱3.00; F. Bernhardt, Hamburg, ₱1,848.27; P. Wainschenk, P/War ₱322.57; A. Vellela, Manila, ₱893.50; Dietrich Brun P/War ₱14.11; J. H. Finche P/War ₱6,383.40; Cebr. Brunschweiler Hauptweil, ₱28,599.27; Alwin Raedler, Berlin, ₱278.12; A. Schonberg, P/War ₱10.00; Deutscher Maschinenbau, Pekin, ₱23,204.20; Telge & Cehroeter, Tientsin, ₱754.68; Gravenhorst & Co., New York, ₱19,392.16; Goods in Transit, ₱9,286.01; Stickerei Feldmuhle, Rohrschach, ₱628.67; Emil Lutz, Zurich, ₱178,695.82; Esslinger-Commission Receivable, ₱1,521.67; Tomoshiro Tanaka, Osaka, ₱123.40; Iwai & Co., Kobe, ₱82.68; United Alkali Co., Liverpool, ₱48.18; United Supply Co., San Francisco, ₱924.65; Pacific Mail SS Co. Claim Acct., ₱919.69; Meerkamp & Co., claim acct. ₱53.41; Smith, Bell & Co., claim acct., ₱5.10; W. F. Stevenson & Co., claim acct., ₱51.50; SS "Kadur" claim acct., ₱190.20; SS "Chines Price Q," claim acct., ₱838.98; North German Lloyd, Bremen, ₱14,713.08; Deutsch Austral. Dampfsch. Ges., Hamburg, ₱27,900.16; Deutsch Sudsee Phosphat Ges., Hamburg, ₱1,138.01; M. Jebesen, Apenrade, ₱11,625.28; Deutsche, Dampfschiffs Ges., "Hansa," Hamburg, ₱135.58; Melchers & Co., Shanghai, ₱866.82; "Albingia" Insurance Co., Hamburg, ₱1,138.03; "Alleanz" Insurance Co., Berlin,

₱55.84; Western Assurance Co., Toronto, ₱28.79; Samarang Sea & Fire Assur. Co., London, ₱43.75; North German Insurance Co., Hamburg, ₱8,707.96; Trade Debtors, ₱2,774.47; Robert Dollar Co., claim acct., ₱377.50; Dampfsch. Reederei "Union" Hamburg, ₱100.00; G. F. Scholetelborg, Seattle, ₱22,476.64; H. J. Bell & Co., Manila, ₱1,012.93; Versicherungs Gesellschaft "Hamburg," ₱38,155.47; China Mail SS Co., claim acct., ₱58.93; Ricardo Aguado, Manila, ₱1,250.00;

Cebu (per November 30th 1, 1918).—Sander Wieler & Co., Hongkong, ₱13.70; Jose Hagedorn, Cebu, ₱2,536.56; Sundry Account, ₱42.80; Outstanding Claims, ₱2,078.40; Special debtors, ₱104.14;

Iloilo (per December 31, 1918).—Refund unexpired premiums on Hamburg insurances, ₱319.45; Refund Unexpired Premiums on Lloyds Policies, ₱2,892.95; Neuss Hesslein & Co., New York (₱128.64 less Manila liability, ₱52.98) ₱75.66; Outstanding Claims, ₱167.28; goods.

Zamboanga (per December 31, 1918).—Guttapercha consigned to New York ₱342.17; Lumber consigned to London ₱4,245.07. Foreign Currency Exchange (o/Germany) ₱1,100.00; Jafee & Sons, Manchester ₱461.46; Produce Contractors ₱1,135.73; Copra vendors ₱794.12; Tow Currents Accts. (₱4,086.76 less depreciation ₱3,774.97 or ₱311.79 less payments in 1919) ₱192.79; Outstanding current accts (₱2,068.95 less depreciation ₱1,020.67) ₱1,048.28.

Neither the undersigned nor the United States nor the Alien Property Custodian nor any representative, or agent, or agency thereof, shall be held or admitted to make any representation or guaranty, express or implied, concerning or in any way respecting such accounts receivable.

This sale has been made under the supervision and with the approval of the Alien Property Custodian, in accordance with the terms and conditions of the aforesaid license.

Signed at Manila, Philippine Islands, this 24th day of January, 1919.

BEHN, MEYER & CO., LTD.,
(Sgd.) By J. M. MENZI,
Manager.

Signed in the presence of:

(Sgd.) A. S. CROSSFIELD.
" J. MA. DE JESUS.

UNITED STATES OF AMERICA,
Philippine Islands:

In the City of Manila, of this 24th day of January 1919, personally appeared J. M. Menzi known to me to the same person who executed the foregoing instrument and acknowledged the same to be his free act and deed. He exhibit his cedula F11441 issued at Manila of January 17, 1919.

Before me,

(Sgd.) S. W. O'BRIEN,
Notary Public.

My commission expires Dec. 31, 1922.

Notarial register No. 44, p. 92, book IV.

Approved:

A. MITCHELL PALMER,
Alien Property Custodian,
By DOUGLAS M. MOFFAT,
Managing Director for the Philippine Islands.

UNITED STATES OF AMERICA,
Philippine Islands:

In the City of Manila on this 24th day of January, 1919, personally appeared Douglas M. Moffat, known to me to be the same person who executed the foregoing approval and acknowledged the same to be his free act and deed. He

did not exhibit a cedula being exempt from this as on account of being a non-resident of and but temporarily in the Philippines.

Before me,
(Sgd.)

S. W. O'BRIEN,
Notary Public.

My commission expires Dec. 31, 1920.

Notarial Register No. 47, p. 93, book IV.

UNITED STATES OF AMERICA,
Philippine Islands,
City of Manila, ss:

I, S. W. O'Brien, a Notary Public in and for the City of Manila, Philippine Islands, hereby certify that the foregoing is a true and correct copy of the original thereof, which was acknowledged before me on the 24th day of January, 1919, and with which I have compared it.

In witness whereof, I have hereunto set my hand and affixed my Notarial Seal, this 22nd day of March, 1923.
(Sgd.)

S. W. O'BRIEN,
Notary Public.

My commission expires December 31.
Notarial Register No. 40, p. 73, book IV.

EXHIBIT "F."

UNITED STATES OF AMERICA:

The Alien Property Custodian.

Office of the Managing Director in the Philippines, Manila.

February 28th, 1919.

Mr. W. D. Pemberton, receiver Behn, Meyer & Co., Ltd.,
Manila, P. I.

DEAR SIR:

Report: 50426; Reporter: Behn, Meyer & Co., Ltd., Manila,
P. I.Trust: 50238; Enemy: Behn, Meyer & Co., Ltd., Singapore,
S. S.I wish to acknowledge receipt of ₱392,674.96 in this case,
paid in answer to our demand dated February 21st, 1918.Formal acquittance will be mailed you direct from our
Washington office.

Yours truly,

DOUGLAS M. MOFFAT,

Managing Director for the Philippine Islands,

(Sgd.) By P. B. POPR.

PHILIPPINE ISLANDS,

*City of Manila, ss:*I hereby certify that I have carefully compared the
foregoing with the original and that the foregoing is a true,
correct and accurate copy of its original.In witness whereof I have hereunto set my hand and
affixed the seal of my office at Manila, P. I., on the — day
of —, 1923.

No. —, page —, book —.

EXHIBIT "G."

Lazarus G. Joseph.

Manila, P. I., August 1st, 1923.

Mr. J. M. Menzi, Manila, P. I.

SIR: As the receiver of Behn, Meyer & Co., Ltd., and inasmuch as you have testified in Court that the books of accounts of the said firm are in your possession, will you kindly turn the same over to me.

As receiver of Behn, Meyer & Co., Ltd., I am the legal depository of the said books and request that you indicate the time when I may go to your office to receive the said books.

Very respectfully,
(Sgd.) LAZARUS G. JOSEPH,
Receiver for Behn, Meyer & Co., Ltd.

EXHIBIT "H."

Manila, P. I., August 3, 1923.

Mr. Lazarus G. Joseph, Manila, P. I.

DEAR SIR: I beg to acknowledge receipt of your letter of August 1, 1923, requesting me to turn over to you the books of accounts which formerly pertained to Behn, Meyer & Co. Ltd.—I regret to inform you that I cannot comply with your request as these books pertain to the business which was formerly purchased (by John Bordman from the Alien Property Custodian of the United States), and were delivered by the Alien Property Custodian to him, as evidence of the outstanding accounts of the business of Behn, Meyer & Co., Ltd., which were purchased by the said John Bordman. These outstanding accounts are being liquidated,

and it is unnecessary for me to say that these books are necessary as evidence and in liquidation of these accounts. Furthermore, I cannot recognize your right to have possession of these books; first, for the reasons which I have above stated, and secondly, that I do not consider you, under the law, as the legally appointed Receiver for the business of Behn, Meyer & Co. Ltd., as that business was liquidated by the Alien Property Custodian of the United States, and finally sold. You will recall that in the case which you brought against the Hamburg Amerika Line, your counsel requested the Court to turn over these books to you, which request was denied by the Court.

Yours respectfully,
(Sgd.)

J. M. MENZI.

I.

Under date of September 14, 1923, John Bordman, J. M. Menzi and the Bank of the Philippine Islands filed a motion to intervene, and a motion to vacate order appointing Lazarus G. Joseph as Receiver of the plaintiff, in the following tenor:

(Omitting Title and Heading.)

Motion to Intervene.

Come now John Bordman, J. M. Menzi, and the Bank of the Philippine Islands through their undersigned attorneys, and hereby move the Court for permission to intervene in the receivership proceeding in above-entitled action solely for the purpose of the motion to vacate the order of August 10, 1922, appointing a Receiver for the property, assets and estate of Behn, Meyer & Co., Ltd., the original of which said Motion is attached hereto and made a part hereof. That as shown from said motion, these parties have a legal interest in the subject-matter of said receivership and an interest against that of the parties to said proceeding.

Wherefore the above-named parties respectfully pray the Court that an order issue, permitting them to intervene in said receivership proceeding in this case solely for the purposes of the motion to vacate the order of August 10, 1922, appointing a Receiver for the property, assets and estate of Behn, Meyer & Co., Ltd., and for such other relief as to the Court may seem to be just and equitable.

Manila, P. I., September 14, 1923.

	CROSSFIELD & O'BRIEN,
(Sgd.)	By S. W. O'BRIEN,
	<i>Attorney for John Bordman and</i>
	<i>J. M. Menzi, 34 Escolta, Manila.</i>
(Sgd.)	HARTIGAN & WELCH,
	<i>Attorneys for Bank of the P. I.</i>

(Omitting Title and Heading.)

Motion to Vacate Order Appointing Lazarus G. Joseph as Receiver of Behn, Meyer & Co.

Come now John Bordman, J. M. Menzi, and the Bank of the Philippine Islands, intervenors in the above-entitled action, through their undersigned attorneys, and with the permission of the Court first had and obtained, hereby move this Honorable Court that the order of August 10, 1922, in the above-entitled action, appointing Lazarus G. Joseph as Receiver of Behn, Meyer & Company, Ltd., on the *ex parte* petition of A. N. Jureidini & Bros., be vacated and set aside for the following reasons:

That on the 16th day of February, 1918, all the business and assets of every nature of the firm of Behn, Meyer & Company, Ltd., in the Philippine Islands, were taken over by the Alien Property Custodian of the United States of America under and in accordance with the provision of the Trading with the Enemy Act, and by direction of said Alien

Property Custodian, one W. D. Pemberton was duly appointed under said Act and placed in full charge of said business and assets as a Receiver thereof marked Exhibit "A," and made a part hereof;

That thereafter all the business and assets of the said Behn, Meyer & Co., Ltd., including the good-will, trade-marks, accounts receivable, together with all vouchers, entries, and other proofs of the indebtedness such as the books of account, etc., were completely liquidated and sold to one of the intervenors herein, John Bordman; by the direction and under the supervision of the said Alien Property Custodian, in accordance with the provisions of the Alien Enemy Act, for the sum of ₱660,000.00, as shown by the letters and bills of sale, copies of which are attached hereto, marked Exhibits "B," "C," "D" and "E" and made a part hereof;

That the intervenor herein, The Bank of the Philippine Islands, advanced to the said John Bordman the said sum of ₱660,000.00, with which to purchase the said business and assets of the said Behn, Meyer & Co., Ltd., which sum was turned over to the Receiver of the said Alien Property Custodian;

That the proceeds of the said liquidation of business and assets of the said firm of Behn, Meyer & Co., Ltd., by the said Alien Property Custodian, as hereinbefore stated, in the sum of ₱392,664.96, was upon demand turned over by his said receiver W. D. Pemberton, to the said Alien Property Custodian of the United States in accordance with the provisions of the Trading with the Enemy Act, as shown by the demand and the receipt attached hereto, marked Exhibits "F" and "G," and made a part hereof, and is now in his possession;

That as shown by the record of the above-entitled action, the said firm of Behn, Meyer & Co., Ltd., on or about the 23rd day of January, 1917, brought the above entitled action against the then Insular Collector of Customs, J. S. Stanley, to recover from him the possession of certain merchandise

then in his possession. A. N. Jureidini & Bros. intervened in the case, claiming title to the said merchandise. After the case was duly tried, the Court on February 28, 1918, entered judgment in favor of the said Behn, Meyer & Co., Ltd., for the delivery of said merchandise to it, upon paying certain charges against it. In accordance with this judgment, the merchandise was delivered to the said Behn, Meyer & Co., Ltd., and passed into the hands of the said Alien Property Custodian. The said A. N. Jureidini & Bros. appealed from said judgment to the Supreme Court of the Philippine Islands, which Court reversed the judgment of the lower Court and returned the record for a new trial. A new trial was held and on the 24th day of February, 1922, judgment was entered in favor of the said A. N. Jureidini & Bros. and against the said Behn, Meyer & Co., Ltd., for the sum of ₱1,988.00, as damages, and in the further sum of ₱1,988.00 in the event that the said merchandise was not delivered to it as the value thereof. Execution was taken out by the said A. N. Jureidini & Bros., and placed in the hands of the Sheriff of Manila, who returned the same unsatisfied;

That with full knowledge of the facts alleged in paragraphs 2, 3, 4 and 5 hereof, the said A. N. Jureidini & Bros., through its counsel, filed an *ex parte* petition in this case on August 8, 1922, alleging among other things that—

"4. That at the time of the institution of the above entitled action and prior and subsequent thereto, plaintiff above named was a foreign corporation, authorized to do and doing business within the Philippine Islands, and having its principal place of business in the City of Manila therein, and during said times conducted a large and substantial commercial business.

"5. That your petitioner is informed and believes and so states the fact to be that plaintiff above named, the judgment debtor herein, has subsequent to the institution of the above action, but prior to the ren-

dition of the final judgment herein, *ceased to actively conduct its business within the Philippine Islands, and has forfeited its corporate rights so to do and is insolvent*, but has within the Philippine Islands, and within the jurisdiction of this Court sufficient assets, consisting of various and divers interest in properties and choses in action, to satisfy the judgment herein, but that the same can not be secured to be applied upon the judgment herein without the appointment of a Receiver to collect and preserve said assets and unless a Receiver is appointed herein to so collect and preserve the assets of said judgment debtor, the plaintiff herein, the judgment of your petitioner will be and become wholly worthless and of no avail."

It then prays for the following relief:

"Wherefore, your petitioner prays that a Receiver be appointed by this Court to take charge of the estate and effects of said Behn, Meyer & Co., Ltd., judgment debtor herein and plaintiff above named, and to collect the debts and property due it and to pay the outstanding debts thereof and to divide the money and other properties that shall remain over among the stockholders or members, and for such other and further relief as the Court may deem just and equitable;"

That upon such *ex parte* petition of the said A. N. Jureidini & Bros., the Court on the 10th day of August, 1922, made and entered the order now complained of, the dispositive part of which is as follows:

"It is now considered and ordered that Lazarus G. Joseph of Manila, Philippine Islands, be and he hereby is appointed Receiver of Behn, Meyer & Co., Ltd., plaintiffs above named and judgment debtor

herein, its property, assets and estate, with such powers as are prescribed by statute, upon his giving and filing a bond here in the sum of One Thousand (P1,000.00) Pesos, which may from time to time be increased upon the order of this Court.

"It is so ordered.

"Manila, P. I., August 10, 1922.

(Sgd.)

"GEO. R. HARVEY,

"*Judge.*"

That the said Lazarus G. Joseph, alleging himself to be the regularly and legally appointed Receiver of the property, assets and estate of the said Behn, Meyer & Co., Ltd., and with full knowledge of the facts hereinbefore alleged, on the 4th day of September, 1923, commenced an action in the Court of First Instance of Manila against the intervenors herein, the said John Bordman, and The Bank of the Philippine Islands, and J. M. Menzi, to annul the said sales made by the direction and under the supervision of the said Alien Property Custodian of the United States under the Trading with the Enemy Act, Exhibits "D" and "E," attached hereto, and to recover back the property sold by that official, being case No. 24892, of this Court, the prayer of his complaint being as follows:

"Therefore, the plaintiff herein prays:

"That in the first cause of action above set forth that the Court order the defendants, and each of them severally, to render a true and correct account of any and all moneys and or property received by the said defendants and or any of them, directly or indirectly, from assets belonging to the said firm Behn, Meyer & Co., Ltd., on January 31, 1917, or at any subsequent time;

"That the Court declared that the alleged bill of sale (Exhibit A) (*Exhibit D herein*) made by the defendant J. M. Menzi and in favor of the said defend-

ant John Bordman, to be null and void and of no effect;

"That the Court order that the defendants, and each of them to deliver to the plaintiff the property taken by defendants or any of them in pursuance to the said alleged Bill of Sale (Exhibit A), and that in the event that the said defendants or any of them have not possession of the aforesaid property, then, in that event, the Court order the defendants, and each of them severally to pay the plaintiff the value of said property and/or any and all sums of money collected by them or any of them from the sale or disposal of the aforesaid property or assets and together with interest on the value of the said property at the rate of 6% per annum from the 19th day of March, 1918;

"For such other relief as the Court deems just and equitable and for the costs of this action.

"That in the second cause of action the Court order the defendants, and each of them severally, to render a true and correct account of any and all money received by the said defendants, or any of them severally or jointly, in virtue of or in pursuance of the said document, Exhibit B, or in any other manner, any sums of money, credits or promises, directly or indirectly, from any accounts or choses in action belonging to the said Behn, Meyer & Co., Ltd., on March 19, 1918, or at any subsequent date;

"That the Court order and declare that the said alleged bill of sale (Exhibit B) (*Exhibit E herein*) made by the defendant J. M. Menzi in favor of the said defendant John Bordman, is null and of no effect;

"That the Court order the defendants, and each of them severally, to pay to the plaintiff any and all amounts, collected or received by the defendants, or any of them jointly and/or severally, for all or any

of the alleged accounts receivable, and interest at the rate of 6% per annum of the total amount of the said accounts receivable as shown by Exhibit B, from the 19th day of March, 1918.

"For such other relief as this Court shall deem just and equitable, and for costs of this action."

That Sec. 7, of the Trading with Enemy Act as amended November 4, 1918, which was expressly extended to the Philippine Islands, provides as follows:

"The sole relief and remedy of any person having any claim to any money or other property heretofore or hereafter conveyed, transferred, assigned, delivered, or paid over to the Alien Property Custodian, or required so to be, or seized by him shall be that provided by the terms of this act, and in the event of sale or other disposition of such property by the Alien Property Custodian shall be limited to and enforced against the net proceeds received therefrom and held by the Alien Property Custodian or by the Treasurer of the United States."

That according to the express provisions of the Trading with the Enemy Act, as above shown, the sole relief and remedy of the said A. N. Jureidini & Bros., a creditor of the said Behn, Meyer & Co., Ltd., is that provided in said act itself, namely, Section 9 thereof, which, as amended, provides that anyone "not an enemy or ally of enemy" claiming any interest, right, or title in any money or other property so sequestered and held, may give notice of his claim and itself, namely, Section 9 thereof, which, as amended, pro-institute a suit in equity against the Custodian or the Treasurer, as the case may be, to establish and enforce his claim; and where suit is brought, the money or property is to be retained by the Custodian or in the Treasury, to abide the final decree, and said section further provides:

"Except as herein provided, the money or other property conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian shall not be liable to lien, attachment, garnishment, trustee process, or execution, or *subject to any order or decree of any court.*" See —

That the District Courts of the United States are the only Courts given jurisdiction to entertain the action provided for in Sec. 9, of said Act, as shown by Section 17 thereof.

"That the district courts of the United States are hereby given jurisdiction to make and enter all such rules as to notice and otherwise, and all such orders and decrees, and to issue such process as may be necessary and proper in the premises to enforce the provisions of this Act, with a right of appeal from the final order of decree of such court as provided in sections one hundred and twenty-eight and two hundred and thirty-eight of the Act of March third nineteen hundred and eleven, entitled "An Act to codify, revise, and amend the laws relating to the judiciary."

That the only jurisdiction given to the courts of First Instance in the Philippine Islands is in regard to criminal offenses under said Act, as shown by Section 18 thereof.

That in view of the fact all the business and assets of the said firm of Behn, Meyer & Co., Ltd., were taken over by the said Alien Property Custodian under the provisions of the Trading with the Enemy Act, and liquidated and sold by him and the proceeds of such liquidation being now in his possession and where it was at the time the said Receiver in this case was appointed the Court under the express provisions of that Act had no jurisdiction to appoint a Receiver for the business and assets of said firm at the instance of a creditor of the same, whose only remedy is that provided in

Sec. 9, of that Act, and the order of August 10, 1922, appointing such a Receiver is absolutely null and void.

Wherefore these intervenors respectfully pray the Court that the order of this Court under date of August 10, 1922, appointing the said Lazarus G. Joseph as the Receiver of the property assets, and estate of Behn, Meyer & Co., Ltd., be immediately vacated and set aside on the ground that the said A. N. Jureidini & Bros., under the circumstances had no right to apply for such receivership under the law and that the Court had no jurisdiction to make such an appointment, and consequently its order is null and void, and that these intervenors have and recover their costs from the said parties responsible for the appointment of such Receiver, and for such other and further relief as to the Court may seem just and equitable.

Manila, P. I., September 14, 1923.

CROSSFIELD & O'BRIEN,

(Sgd.) By S. W. O'BRIEN,

Attorneys for Intervenors J. M. Menzi and

John Bordman, 34 Escolta, Manila.

(Sgd.) HARTIGAN & WELCH,

Attorneys for Intervenor

The Bank of the Philippine Islands.

UNITED STATES OF AMERICA,

Philippine Islands,

City of Manila, ss:

J. M. Menzi, after first being sworn upon oath, deposes and says: That he is one of the intervenors in the receivership proceedings in the above-entitled action, that he has read the motion set out above to vacate the order appointing a Receiver for the property, assets and estate of Behn, Meyer & Co., Ltd., and knows the contents thereof; that the allegations contained therein are true, according to the best of his knowledge and belief.

(Sgd.)

J. M. MENZI.

Subscribed and sworn to before me, this 15th day of September, 1923. Affiant exhibited to me his cedula No. 3577, issued at Manila, January 3, 1923.

(Sgd.)

EUGENIO ANGELES,

Notary Public.

My commission expires December 31, 1924.

Notarial Register No. 350, page 71, book II.

(NOTE.—For Exhibits "A", "B", "C", "D", "E" and "G" of the foregoing motion, see: Exhibits "A", "B", "C", "D", "E" and "F" and of the "Answer of J. M. Menzi to the Order to Show Cause," supra).

EXHIBIT "F."

A. C. Form No. 106-B—Short Demand for Money and Property.

Report No. 50426, P. I.

Trust No. 50238, P. I.

Original.

Alien Property Custodian.

Demand by Alien Property Custodian for Property.

Extracts from "Trading with the Enemy Act."

SEC. 7 (c). "If the President shall so require, any money or other property owing or belonging to or held for, by, on account of, or on behalf of, or for the benefit of an enemy or ally of enemy not holding a license granted by the President hereunder, which the President after investigation shall determine is so owing or so belongs or is held, shall be conveyed, transferred, assigned, delivered, or paid over to the alien property custodian.

SEC. 7 (e). "No person shall be held liable in any court, for or in respect to anything done or omitted in pursuance of any order, rule, or regulation made by the President under the authority of this Act.

"Any payment, conveyance, transfer, assignment, or delivery of money or property made to the alien property custodian hereunder shall be a full acquittance and discharged for all purposes of the obligation of the person making the same to the extent of same. The alien property custodian and such other persons as the President may appoint shall have power to execute, acknowledge, and deliver any such instrument or instruments as may be necessary or proper to evidence upon the record or otherwise such acquittance and discharge, and shall, in case of payment to the alien property custodian of any debt or obligation owed to an enemy or ally of enemy, deliver up any notes, bonds, or other evidences of indebtedness or obligations, or any security therefor in which such enemy or ally of enemy had any right or interest that may have come into the possession of the alien property custodian, with like effect as if he or they, respectively, were duly appointed by the enemy or ally of enemy, creditor, or obligee."

Extracts from Executive Order of February 26, 1918.

SEC. 1 (c). "The words 'right,' 'title,' 'estate,' 'power,' and 'authority' of the enemy, as used herein shall be deemed to mean respectively such right, title, interest, estate, power, and authority of the enemy as may actually exist and also such as might or would exist if the existing state of war had not occurred, and shall be deemed to include respectively the right, title, interest, estate, power and authority in law or equity or otherwise of any representative of or trustee for the money or other person claiming under or in the right of, or of the benefit of, the enemy."

SEC. 2 (a). "A demand for the conveyance, transfer, assignment, delivery, and payment of money or other property, unless expressly qualified or limited, shall be deemed to include every right, title, interest, and estate of the enemy in and to the money or other property demanded as well as every power and authority of the enemy thereover."

SEC. 2 (c). "When demand shall be made and notice thereof given, as hereinbefore provided, such demand and notice shall forthwith vest in the Alien Property Custodian such right, title, interest, and estate in and to and possession of the money or other property demanded and such power or authority thereover as may be included within the demand, and the Alien Property Custodian may thereupon proceed to administer such money and other property in accordance with the provisions of the Trading with the Enemy Act, and with any orders, rules or regulations heretofore, hereby, or hereafter made by me or heretofore or hereafter made by the Alien Property Custodian."

Mr. W. D. Pemberton, receiver Behn, Meyer & Co., Ltd.:

Address: Manila, P. I.

I, A. Mitchell Palmer, Alien Property Custodian, duly appointed, qualified, and acting under the provisions of the act of Congress known as the "Trading with the Enemy Act," approved October 6, 1917, and the executive orders issued in pursuance thereof, by virtue of the authority vested in me by said act and by said executive orders, after investigation do determine that:

(Name of enemy or ally of enemy:) Behn, Meyer & Co., Ltd., whose address is (Last known address:) Singapore, Strait Settlements, is an enemy (not holding a license granted by the President), and has a certain right, title, and interest in all that certain money, and property mentioned and particularly described in your report to the Alien Property Custodian, dated February 19th, 1919, as owing or be-

longing to, or held for, by on account of, or on behalf of, or for the benefit of, the "person" hereinabove mentioned, together with all interest accrued thereon to date of payment to the Alien Property Custodian, and all dividends or accumulations thereon whatsoever now in your possession or which may hereafter come into your possession.

I, as Alien Property Custodian, do hereby require that the said money and property together with said dividends or accumulations shall be by you conveyed, transferred, assigned, delivered, and paid over to me, as Alien Property Custodian, to be by me held, administered, and accounted for as provided by law.

The ——— is hereby designated as depository, and is authorized to receive for and on behalf of the Alien Property custodian, the property herein mentioned, and upon the service of this demand on you by said depository you are directed to deliver the said property to it forthwith. For money demanded, checks may be delivered to the depository, which in all cases should be made payable to the Alien Property Custodian.

Witness my hand and seal of office, this 21st day of February, 1919.

A. MITCHELL PALMER,

Alien Property Custodian.

DOUGLAS M. MOFFAT,

(Sign.)

By P. B. P.,

Managing Director for the Philippine Islands.

(Omitting Title and Heading.

Notification.

To A. N. Jureidini & Bros. and Lazarus G. Joseph, alleged receiver of Behn, Meyer & Co., Ltd., or their attorneys, Messrs. Schwarzkopf & Ohnick:

You will please take notice that on Tuesday, September 18, 1923, at 8:30 a. m., or as soon thereafter as counsel may

be heard, the undersigned will move the Court to hear and decide the motion to intervene attached hereto, and, if such motion is granted, immediately thereafter the motion vacate the order appointing a receiver for the property, assets and estate of Behn, Meyer & Co., Ltd., also attached hereto, will be submitted to the Court for hearing and decision.

Manila, P. I., September 14, 1923.

(Sgd.) CROSSFIELD & O'BRIEN,
By S. W. O'BRIEN,
Attorneys for John Bordman and
J. M. Menzi, 34 Escolta, Manila.
(Sgd.) HARTIGAN & WELCH,
Attorneys for the Bank of the P. I.

Received copy of foregoing notification, copy of motion to intervene, and copy of motion to vacate order appointing receiver of Behn, Meyer & Co., Ltd.

Law offices of—

SCHWARZKOPF & OHNICK,
(Sgd.) By FLOR. VALBUENA,
Attorneys for A. N. Jureidini & Bros. and
Lazarus G. Joseph.

September 15, 1923.

J.

Under date of September 17, 1923, an opposition was filed to the foregoing motions of the intervenors in the following tenor:

(Omitting Title and Heading.)

Opposition to Motion of John Bordman, J. M. Menzi, and Bank of the Philippine Islands.

Come now A. N. Jureidini & Bros. and Lazarus G. Joseph as Receiver of Behn, Meyer & Co., Ltd., through their undersigned attorneys, and in opposition to the motion filed herein

by one John Bordman, one J. M. Menzi and the Bank of the Philippine Islands, respectfully submits that the facts stated in support of said motion are not sufficient to permit in intervention in the above entitled proceedings.

It appears from said motion that the sole purpose of the desired intervention is to set aside the order heretofore entered in the above cause appointing a Receiver of said Corporation. The motion to intervene is so preposterous and absurd that the same may be disposed of with brevity.

It will be noted that the purported intervenors do not claim any interest in the proceedings favorable either to the plaintiff or the defendant, and therefore, may not intervene as a defendant or plaintiff. They claim an interest adverse to all of the parties to the action, the exact nature of adversity not being set forth in the supporting statement.

It seems to be their contention that John Bordman and J. M. Menzi purchased certain assets of Behn, Meyer & Co., Ltd., through a conveyance which the Receiver has charged in a separate action filed in the Court of First Instance for the City of Manila to have been fraudulent. To support this contention, portions of the complaint have been set forth as also two alleged Bills of Sale, using among other things the respective expressions:

"Does hereby sell and convey to said John Bordman, his executors, administrators and assigns, the *following accounts* receivable, together with all vouchers, entries and other proofs of the indebtedness, *to wit*—"

and

"Does hereby sell and convey to said John Bordman, his executors, administrators and assigns, the *following property, to wit*:—"

after each of which specific properties, the alleged subject matter of the sales described. In other words, they claim

that they purchased certain particular properties which at one time belonged to Behn, Meyer & Co., Ltd. To here deny the validity of any title which they may have received by virtue of said alleged bills of sale is unnecessary for the reason that one suit, being civil cause No. —, has already been filed by the Receiver against the persons making application to intervene herein.

But assuming for the sake of argument that these parties have purchased certain properties that heretofore belonged to Behn, Meyer & Co., Ltd., that in itself does not give the movers in the motion for intervention any right whatsoever to intervene in this cause or to attack the appointment of a Receiver of Behn, Meyer & Co., Ltd. and its assets. If the bills of sale which the movers claim they hold be valid, the Receivership cannot extend to or cover any of said properties. But the receivership does cover corporate entity of Behn, Meyer & Co. Ltd. and all assets which it may have. What right has Mr. Menzi or the Bank of the Philippine Islands to obstruct, for instance, the collection of the judgment which A. N. Jureidini & Bros. has against Behn, Meyer & Co., Ltd., or what right does Menzi or the Bank of the Philippine Islands have to prevent the Receivership collecting the individual just claims of Messrs. Crossfield & O'Brien, Attorneys-at-Law, from Behn, Meyer & Co., Ltd., through the receivership proceedings?

So far as Menzi *et al.* are concerned, they are utter strangers to the above proceedings and have no legal interest whatsoever in the above proceedings.

Why should the Bank of the Philippine Islands, Menzi and Bordman seek to intervene in these proceedings? There is only one answer: the Receiver has heretofore applied to this Honorable Court to compel Bordman to surrender up the books of account of Behn, Meyer & Co., Ltd., the possession of which rightfully belongs to the Receiver. This attempted intervention is nothing more than an attempt to confuse the mind of the Court upon the issue as to whether

or not the books should be surrendered to the Receiver. They must be afraid of the facts which the books of account of Behn, Meyer & Co., Ltd. will disclose.

It is true also that the Receiver has brought suit against these parties alleging fraudulent transactions. The outcome of that suit will be determined by the merits. They are hollering before they are hurt, but really it would seem that they anticipate an adverse outcome to that suit unless they may be permitted to attack the Receiver herein, whose sole purpose is to conserve for the creditors and stockholders of Behn, Meyer & Co., Ltd., any assets that the Corporation might have.

It is well settled that a creditor, stockholder or bond holder may not intervene in a suit for the purpose of attacking the jurisdiction of the Court to appoint a Receiver or to question the propriety of the appointment (34 Cyc., 161). Neither Brodman, Menzi or the Bank of the Philippine Islands are creditors, bondholders or stockholders of Behn, Meyer & Co., Ltd., according to the motion for intervention. They and each of them are the rankest strangers to these proceedings.

The records and files in this case disclose the fact that Lazarus G. Joseph was appointed Receiver of Behn, Meyer & Co., Ltd., strictly in accordance with the statutes in such cases made and provided and no facts whatsoever have been set forth in the so-called motion to discharge the Receivership attached to the motion for intervention which in any way impugn the jurisdiction of the Court of First Instance for the City of Manila to appoint a Receiver.

Manila, September 17, 1923.

SCHWARZKOPF & OHNICK,

By BENJ. S. OHNICK,

Attorneys for Receiver of Behn, Meyer & Co., Ltd.

Wise Bldg., 178 J. Luna, Manila.

K.

Under date of September 25, 1923, the following resolution was entered in this case:

(Omitting Title and Heading.)

Resolución.

Tres mociones hay en autos que requieren resolución: la de Lazarus G. Joseph que pide en su concepto de Depositario Judicial designado para hacerse cargo de los bienes de la demandante, una orden para obligar a J. M. Menzi a que le haga entrega de los libros de dicha demandante, que Menzi que pide le denegación de dicha petición; y la de John Bordenman, J. M. Menzi y "The Bank of the Philippine Islands" para intervenir en estas actuaciones con el objeto de pedir que se deje sin efecto la orden del Juzgado de 10 de Agosto de 1922, que nombra a dicho Lazarus G. Joseph como Depositario Judicial en esta causa.

Un examen de los autos demuestra que habiendo obtenido sentencia A. N. Jureidini & Bros. contra la demandante, en 24 de Febrero de 1922, por la cantidad de ₱3,488.00 y las costas, solicitó y obtuvo un mandamiento de ejecución de dicha sentencia, el 6 de Abril del expresado año. Habiéndose devuelto el mandamiento expedido al efecto por el Sheriff con el informe de que no le habia sido posible hallar dentro de la jurisdicción del Juzgado, propiedades de ninguna clase de la sentencia, obtuvo,—bajo la alegación de que había descubierto que dicho demandante tenía aun suficiente bienes en las Islas—, el nombramiento de un depositario el 10 de Agosto de 1922, habiendo sido designado para dicho cargo Lazarus G. Joseph. El depositario así nombrado ha pedido después que J. M. Menzi, en cuyo poder se hallan los libros que un tiempo pertenecieron a la demandante, fuese ordenado a hacerle entrega de dichos libros, alegando que es para

cumplir mejor con su cometido y ultimar las trámites necesarios en esta causa.

J. M. Menzi, en una contestación muy extensa a la orden dirigida o él requiriéndole a exponer sus razones por que no debía ser ordenado conforme lo pide el depositario, pidió lo que expresan sus mociones de que al principio de la presente se ha hecho mencionado.

Es un hecho que se desprende de los documento que acompañan a las referidas, mociones de dicho Menzi, de John Bordman y de The Bank of the Philippine Islands, que han solicitado permiso para intervenir en estas actuaciones para el fin ya mencionado, que actualmente obran en poder de dicho Menzi los libros de cuentas que un tiempo pertenecieron a la demandante Behn, Meyer & Co., Ltd. Llegó a tomar posesión de dichos libros por haberselos entregado a él, John Bordman, que había comprado todas las propiedades derechos y acciones y aun los papeles y libros de cuentas de la mencionada demandante.

Se desprende, además, de dichos documentos los que, dicho sea de paso no han sido impugnados ni contradichos por Lazarus Joseph, que hacia el 16 de Febrero de 1918, o sea, cuatro años, poco más o menos antes de obtener A. N. Jureidini & Bros. la aludida sentencia a su favor contra la mencionada demandante, el Custodio de Bienes de Extranjeros en Filipinas nombrado de conformidad con las disposiciones de la Ley del Congreso de los Estados Unidos de 12 Octubre de 1917, intitulada "Ley que define, regula y castiga el comercio con el enemigo etc.," designó a W. D. Pemberton como depositario de todas las propiedades de dicha demandante. Con posterioridad a la indicada fecha, y previa licencia concedida al efecto por el director genrente en las Islas Filipinas del Custodio de Bienes de Extranjeros, se vendieron todas propiedades incluyendo las marcas, cuentas cobrables, comprobantes de pago y otros documentos acreditativos de crédito, y los libros de cuentas de la referida demandante, a John Bordman, bajo la dirección y supervisión del mismo

Custodio de Bienes de Extranjeros en Filipinas por la cantidad de ₱660,000.00, cantidad que le fué abonada por "The Bank of the Philippine Islands," habiéndose entregado la cantidad de ₱392,674.96 que es a la que asciende el producto de la liquidación de dichos bienes, al Custodio de Bienes Extranjeros.

Siendo estos los hechos, y disponiendo como dispone la citada Ley del Congreso de los Estados Unidos de 12 de Octubre de 1917, en su artículo 17, que los Tribunales de los Estados Unidos son los únicos que tienen jurisdicción para conocer de asuntos a que han dado o puedan dar lugar algunos o alguno de los hechos allí previstos, o de igual carácter al de Jureidini & Bros. de que aquí se trata, pues como expresamente reza el artículo 18 de la mencionada ley, la jurisdicción de los Tribunales de las Islas Filipinas no se extiende más que conocer de aquellos actos de carácter penal sobre los cuales contiene disposiciones al efecto, este Juzado no debe ni puede válidamente ordenar la entrega a Lazarus G. Joseph de los libros de cuentas en cuestión. Si dichos libros fueron un tiempo de la propiedad de Behn, Meyer & Co., Ltd., han dejado de serlo desde que por el Custodio de Bienes de Extranjeros fueron vendidos a John Bordman, bajo las disposiciones de la Ley del Congreso de los Estados Unidos de que se ha hecho mención. Esto es tanto más cierto aún cuanto que el artículo 9 de la citada ley, contiene entre otras, las siguientes disposiciones.

"Que toda persona que no sea un enemigo o aliado de enemigo, que reclama alguna participación derecho o título en cualquier dinero u otra propiedad que haya sido traspasada, transferida, cedida, entregada o pagada al custodio de bienes de extranjeros, en virtud de la presente, y retenida por él o por el Tesorero de los Estados Unidos, o a quien le esté en deber un enemigo a aliado de enemigo, cuya propiedad o cualquier parte de ella hubiese sido traspasada, transferida, cedida, entregada o pagada al custo-

dio de bienes de extranjeros en virtud de la presente y retenida por él o por el Tesorero de los Estados Unidos, podrá presentar a dicho custodio una notificación de su reclamación, jurada y en forma tal que contenga las circunstancias que el referido custodio exija. * * *

"Salvo como se dispone en la presente, el dinero u otra propiedad traspasada, transferida, cedida, entregada a pagada al custodio de bienes de extranjeros no estarán sujetos a derechos preferente, embargo, entredicho, proceso de depósito, o ejecución, ni a ninguna orden o decreto de un tribunal."

Al expedirse la orden que nombre un depositario en esta causa, no es llamó la atención del Juzgado al hecho de que las propiedades pertenecientes al aquí demandante habían sido vendidas con anterioridad por el Custodio de Bienes de Extranjeros a John Bordman. De otro modo, no se hubiera expedido dicha orden, y menos todavía si se hubiera demostrado que habían sido vendidas dichas propiedades mucho antes de haberse dictado la sentencia en favor de A. N. Jureidini & Bros.

El remedio que le queda a Jureidini & Bros. es ejercitar la acción prevista en el artículo 10 de la tantas veces citada Ley del Congreso de 12 de Octubre de 1917.

Por los expuesto, y habiéndose demostrado, en sentir del Juzgado, el interes que J. M. Menzi, John Bordman y el Banco de las Islas Filipinas tienen en estas actuaciones, siendo el de Bordman el de haber adquirido mediante compra por la cantidad de ₱660,000.00 todos los intereses, derechos, acciones, libros, y comprobantes de la aquí demandante; el de J. M. Menzi, el de haber sido designado por dicho Bordman para hacer cargo de dichos bienes y libros en su nombre; y el del Banco de las Islas Filipinas, el de haber abonada la cantidad de dinero con que el citado Bordman efectuó la compra, por la presente se resuelve permitir como

se permite y autoriza a dichas partes, intervenir en esta causa; y habiendo llegado el Juzgado a la conclusión de que no tiene jurisdicción ni la tenía para expedir el nombramiento de depositario judicial en vista de haber sido vendidos todos los bienes de la mencionada demandante por el Custodio de Bienes de Extranjeros de conformidad con la Ley del Congreso de que ha venido haciéndose mención; por la presente se resuelve asimismo declarar como se declara sin efecto la orden del Juzgado de 10 de Agosto de 1922, que nombre depositario judicial a Lazarus G. Joseph. Cancelese la fianza prestada por dicho depositario para garantizar el fiel desempeño de su cargo; y se declara que J. M. Menzi no tiene obligación de entregar los libros que tiene a su cargo, que fueron anteriormente de la propiedad de la demandante Behn, Meyer & Co., Ltd., al mencionado Lazarus G. Joseph.

Así se ordena.

Manila, I. F., Septiembre 26, 1923.

(Sgd.)

ANACLETO DIAZ,

Juez.

L.

Under date of October 1, 1923, counsel for A. N. Jureidini & Bros. and Lazarus G. Joseph filed the following motion for the reconsideration of the above resolution:

(Omitting Title and Heading.)

Motion.

Come now the Receiver and A. N. Jureidini & Bros. in the above-entitled case and move this Court that the Court reconsiders the resolution of this Court dated September 26, 1923, and thereafter order the delivery of the books to the said receiver.

Manila, P. I., October 1, 1923.

(Sgd.)

SCHWARZKOPF & OHNICK,

Attorneys for the Receiver and

A. N. Jureidini & Bros.

Notice.

To intervenors or their attorneys, Messrs. Crossfield & O'Brien and Messrs. Hartigan & Welch.

SIRS: Please take notice that on Saturday, October 6, 1923, at 8.30 a. m., or as soon thereafter as counsel can be heard, the undersigned will move the Court to take up for hearing and disposition the attached motion.

Manila, P. I., October 3, 1923.

SCHWARZKOPF & OHNICK,

By BENJ. S. OHNICK,

Attorneys for Receiver.

178 Juan Luna, Manila.

Received copy October 3, 1923.

CROSSFIELD & O'BRIEN,

By E. ANGELES.

M.

Under date of December 3, 1923, the Court entered the following order denying the above petition for reconsideration:

(Omitting Title and Heading.)

Auto.

En la moción presentada el día 3 de Octubre de 1923 por el depositario nombrado en esta causa y por A. N. Jureidini & Bros. se pide la reconsideración de la resolución del Juzgado de fecha 26 de Septiembre del expresado año. Aunque en dicha moción no se exponen las razones en que la misma se funda, puede deducirse sin embargo, del informe que la acompaña, que dichas razones son: (1) que el Custodio de Bienes de Extranjeros no ha vendido las propiedades de la demandante Behn, Meyer & Co., Ltd.; (2) que no podía vender dicha propiedades porque ni dicha compañía fué declarada "enemiga" según los términos de

la Ley del Congreso de los Estados Unidos intitulada "Ley que define, regula y castiga el comercio con el enemigo y que provee a otros fines," ni el referido Custodio de Bienes de Extranjeros ha tenido jamás posesión de dichas propiedades después de un debido requerimiento de entrega, por la razón de que no era posible dicho requerimiento en vista del hecho de que a Behn, Meyer & Co., Ltd., se le había concedido por el Presidente de Estados Unidos la licencia necesaria para negociar con el "enemigo."

Una detenida consideración de las pruebas documentales presentadas por John Bordman y J. M. Menzi a quienes se había concedido permiso para intervenir en esta causa, pruebas que no han sido impugnadas y consisten en los Exhibitos A, B, C, D, E y F, hace ver cuán infundadas son las razones alegadas en apoyo de la referida moción de reconsideración. El Exhibito A demuestra que en 16 de Febrero de 1918, el Custodio de Bienes de Extranjeros tomó posesión de todo el negocio y de todas las propiedades de la mencionada compañía Behn, Meyer & Co., Ltd., habiendo sido designado W. D. Pemberton como depositario de los mismos. Los Exhibitos D y E demuestran que la licencia concedida a Behn, Meyer & Co., Ltd., bajo las disposiciones de la ya mencionada Ley del Congreso, no fué solamente para continuar en el negocio, a que estaba dedicada, sino para vender y liquidar dicho negocio y entregar al Custodio el producto de su venta y liquidación si aquél así lo requiriese; y demuestran también juntamente con los Exhibitos B y C, que se practicó dicha liquidación y se vendieron el negocio y todas las propiedades de la citada compañía sin excluir sus comprobantes de cuentas y libros, por la cantidad de ₱660,000.00 a uno llamado John Bordman; y el Exhibito F demuestra que en 21 de Febrero de 1919, el Custodio de Bienes de Extranjeros por medio de su representante en Filipinas, después de determinar que Behn, Meyer & Co., Ltd., era "un enemigo" requirió a la misma que le entregase todas sus propiedades para tenerlas en su poder, y administrarlas de conformidad con la ley.

La alegacion de que el Custodio de Bienes de Extranjeros no ha observado las disposiciones de la repetida Ley del Congreso sobre comercio con el enemigo, ni los reglamentos promulgados para el cumplimiento de dicha ley, al tomar la accion que ha tomado, y obrar en la forma en que ha obrado en el caso de que se trata, de la aqui demandante, no encuentra apayo en las pruebas; y la presunción de la ley es que él obró exactamente como debia obrar y que observó todas las disposiciones de ley relativas al caso.

Por lo expuesto, el Juzgado es de opinion que su resolucion de fecha 26 de Septiembre de 1923, esta sostenida por las pruebas, y ajustada a derecho, y debe ser mantenida.

Por tanto, la moción de reconsideración de la referida resolución queda por la presente desestimada.

Asi se ordena.

Manila, I. F., Diciembre 3, 1923.

(Sgd.)

ANACLETO DIAZ,
Juez.

N.

Under date of December 12, 1923, Lazarus G. Joseph and A. N. Jureidini & Bros. filed the following Exception and Notice to Perfect a Bill of Exceptions:

(Omitting Title and Heading.)

Exception and Notice to Perfect a Bill of Exceptions.

Come now Lazarus G. Joseph, Receiver for the plaintiff in the above entitled case, and Jureidini & Bros., through undersigned attorneys, and except to the order of this Court entered on December 3, 1923, notice of which was received on December 10, 1923, denying their motion for reconsideration of the order of this Court entered on September 26,

1923, and here give notice of their intention to perfect a Bill of Exceptions within the time limited by law.

SCHWARZKOPF & OHNICK,

By BENJ. S. OHNICK,

Attorneys for Receiver and Jureidini Bros.

178 Juan Luna, Manila.

And now, desiring to take this case to the Supreme Court of the Philippine Islands by Bill of Exceptions, notice of which is hereby given, Lazarus G. Joseph, as Receiver of Behn, Meyer & Co., Ltd., and A. N. Jureidini & Bros., within the time limited by law, tender this Bill of Exceptions and pray that the same may be allowed, approved and transmitted to the Supreme Court, together with all evidence, oral and documentary and stipulations taken at the trial of this cause, which said evidence is hereby incorporated by reference into this Bill of Exceptions so that the errors complained of may be considered by the Supreme Court.

Manila, P. I., May 14, 1924.

SCHWARZKOPF & OHNICK,

By BENJ. S. OHNICK,

Attorneys for Receiver of Behn, Meyer & Co.,

Ltd., and A. N. Jureidini & Bros.

178 Juan Luna, Manila.

Received copy May 14, 1924.

HARTIGAN & WELCH.

CROSSFIELD & O'BRIEN.

UNITED STATES OF AMERICA,
Philippine Islands:

COURT OF FIRST INSTANCE OF MANILA, BRANCH III.

No. 14757.

BEHN, MEYER & Co., LTD., Plaintiff,

versus

J. S. STANLEY ET AL., Defendants.

I hereby certify that the Bill of Exceptions filed by the attorneys for Receiver and A. N. Jureidini & Bros. is correct, and is in the opinion of the Court sufficient for a review by the Supreme Court of all rulings, orders and judgments made in this action, to which exceptions were reserved by the attorneys for receiver and A. N. Jureidini, at the time of making each rulings, orders and judgments.

Manila, P. I., May 19, 1924.

GEORGE R. HARVEY,
Judge.

PHILIPPINE ISLANDS,
Manila, ss:

The undersigned hereby certifies that the foregoing Bill of Exceptions, composed of 57 pages, is the original Bill of Exceptions presented by the appellant and approved by this Court.

In faith whereof I sign these presents, in Manila, this 28 day of May, 1924.

(Seal of the Supreme Court of the Philippine Islands.)

R. SUMMERS,
Escribano,
 Por JOSE RECUENCO,
Deputy.

I hereby certify that the foregoing is a true and correct copy.

(Seal of the Supreme Court of the Philippine Islands.)

MANUEL M. DE HUAINOS,
Deputy Clerk Supreme Court.

[Internal revenue stamp, documentary, 20c. Canceled
June, 1924.]

SUPREME COURT OF THE PHILIPPINE ISLANDS, MANILA.

Filed May 29, 1924, at 11.29 a. m.

Conste que en este día de —, de 1924, se han enviado
5 ejemplares de esta Pieza de Excepciones impreso a cada uno
de los abogados de las partes en este asunto.

Por el Escribano.

— — —,
Delegado.

EXHIBIT D.

UNITED STATES OF AMERICA,
Philippine Islands:

IN THE COURT OF FIRST INSTANCE FOR THE CITY OF MANILA.

No. —.

LAZARUS G. JOSEPH, Receiver of Behn, Meyer & Co., Ltd.,
Plaintiff,

vs.

J. M. MENZI, JOHN BORDMAN, and THE BANK OF THE
PHILIPPINE ISLANDS, Defendants.

Complaint.

Comes now plaintiff in the above entitled cause, and for first cause of action alleges:

I.

That the plaintiff in the above entitled cause of action has been regularly and legally appointed by the Court of First Instance for the City of Manila, Philippine Islands, the receiver of Behn, Meyer & Co., Ltd., a foreign corporation duly registered and licensed under the laws of the Philippine Islands, to conduct their business in the Philippine Islands, with their principal place of business in the City of Manila, and that the plaintiff herein has duly qualified as such receiver and as such is now administering the business of the said Behn, Meyer & Co., Ltd.

II.

That the said Behn, Meyer & Co., Ltd., for years prior and at all times mentioned hereinafter, was a corporation duly

and regularly incorporated in the City of Singapore, Strait Settlements, Empire of Great Britain, and as such corporation of the Empire of Great Britain, the said Behn, Meyer & Co., Ltd., applied for, was registered and received a license to do business in the Philippine Islands according to law, and that they have continued to do business for all the times hereinafter mentioned; that the United States of America, during the times hereinafter mentioned, was not at war with Great Britain or any territory or possession of Great Britain; and that the firm of Behn, Meyer & Co., Ltd., was not a corporation incorporated within any territory, including that occupied by the army of any nation with which the United States of America was at war.

III.

That the defendant J. M. Menzi is of legal age, a resident of the City of Manila, and a subject and citizen of the Republic of Switzerland, and has at no time hereinafter mentioned been a citizen or subject of the United States of America nor a citizen nor subject of the Philippine Islands.

IV.

That the defendant John Bordman is of legal age, a citizen of the United States of America, and a resident of the City of Manila, Philippine Islands.

V.

That the defendant The Bank of the Philippine Islands is a duly organized, authorized and registered corporation under the laws of the Philippine Islands with its principal place of business in the City of Manila, Philippine Islands.

VI.

That for several years prior to March 19, 1918, the defendant J. M. Menzi was a shareholder and manager of the

aforesaid foreign corporation, Behn, Meyer & Co., Ltd., in the Philippine Islands, and as such director-manager administered the business of said Behn, Meyer & Co., Ltd., in trust for the shareholders and owners thereof.

VII.

That the said defendant, John Bordman, was during a part of 1918 and a part of 1919 an employee and executive officer in the office of the Alien Property Custodian of the United States of America, with duties and offices in the Philippine Islands.

VIII.

That on the said 19th day of March, 1918, the War Trade Board, in consideration of the information presented by the said J. M. Menzi, and in the City of Washington, D. C., United States of America, and in the exercise of its powers and duties contained in the provisions of the Trading With the Enemy Act and amendments and the Executive Orders, and the rules and regulations issued thereunder, granted to the said Behn, Meyer & Co., Ltd., a War Trade License numbered E. T. License 11291, and which said license is as follows:

"License is hereby granted to Behn, Meyer & Co.,
 "Ltd., a corporation organized under the laws of
 "Straights Settlement, and doing business in the Phil-
 "ippine Islands, to perform such acts as may be
 "necessary to continue the business of the said Behn,
 "Meyer & Co., Ltd., or in the alternative, to perform
 "such acts as may be necessary for a complete sale,
 "liquidation and disposition of the business, assets,
 "and property of the said Behn, Meyer & Co., Ltd.,
 "according as it may seem advisable to the Alien
 "Property Custodian that the business of Behn,
 "Meyer & Co., Ltd., should continue or should be

"liquidated, sold and disposed of; and in the course
 "of performing such acts to trade with any person,
 "firm or corporation, except an 'enemy' or 'ally of
 "enemy' not holding a license granted under the
 "Trading With the Enemy Act, or a person acting on
 "behalf of, or for the benefit of, such an 'enemy' or
 "'ally of enemy.'

"*Provided, however,* that the license may in the
 "discretion and at the direction of the Alien Property
 "Custodian collect, under the supervision of the Alien
 "Property Custodian, any sums due from an 'enemy'
 "or 'ally of enemy' or person acting for or in behalf
 "of an 'enemy' or 'ally of enemy':

"It is a term and condition of this license that:

"1. All acts performed hereunder shall be carried
 "out under the direction and supervision of the Alien
 "Property Custodian and in accordance with such
 "plan and method as may be desired by the Alien
 "Property Custodian, and all expenses of such di-
 "rection and supervision shall be borne by the license;

"2. The license shall transfer to the Alien Prop-
 "erty Custodian may require, the proceeds of any
 "liquidation, sale and disposition, which may occur
 "as aforementioned, either at the termination of said
 "liquidation, sale and disposition, or from time to
 "time during the course thereof;

"3. A report of the progress of such liquidation,
 "sale and disposition shall be made to the Alien Prop-
 "erty Custodian and to the War Trade Board at the
 "end of each calendar month or oftener if required.

"And license is hereby granted to all persons in the
 "United States to participate with Behn, Meyer &
 "Co., Ltd., in any acts which this license may author-
 "ize the said Behn, Meyer & Co., Ltd., to undertake."

IX.

That at the time of the granting the aforesaid license to the said Behn, Meyer & Co., Ltd., the said defendant, John Bordman, was an employee and an executive of the said Alien Property Custodian (who, by virtue of said license and law, supervised the business of the said Behn, Meyer & Co., Ltd.), and that the said John Bordman continued in such employment and executive position until some time in 1919; and that by virtue of the law and the rules and regulations of the Alien Property Custodian, and the Executive Orders of the President of the United States of America, the said John Bordman was incapable to and prohibited by law from dealing directly or indirectly with any property subject to the supervision of the said Alien Property Custodian to his own personal advantage or benefit.

X.

That the defendant the said J. M. Menzi, being a citizen and subject of the Republic of Switzerland and not a citizen or subject to the United States of America nor a citizen nor subject of the Philippine Islands, was incapacitated and prohibited under the law from acquiring any property or rights to or in any property, directly or indirectly, which was held by the Alien Property Custodian, or any property or rights to or in any property subject to the supervision of the said Alien Property Custodian; and that the said J. M. Menzi while acting as Manager of the said Behn, Meyer & Co., Ltd., was prohibited by law from acquiring, for his own profit, use or benefit, any property or property rights of the said Behn, Meyer & Co., Ltd.

XI.

That the defendant, the Bank of the Philippine Islands, in the year 1918 and the month of January of the year 1919 had knowledge of the above facts and of the provisions of

the Trading with the Enemy Act and the amendments thereof and the Executive Orders issued thereunder.

XII.

That notwithstanding the law and the regulations, and the facts as set forth above the defendant, J. M. Menzi, and the defendant, John Bordman, mutually agreed that the said Menzi, purporting to act under the terms of the above-mentioned license, would sell to the said John Bordman certain of the assets of the firm of Behn, Meyer & Co., Ltd., and the said John Bordman agree to buy the said assets and rights from the said J. M. Menzi, and the said defendant, The Bank of the Philippine Islands, agreed with the said J. M. Menzi and the said J. Bordman to furnish the money or capital necessary to the purchase of the said assets by the said John Bordman, provided that the said J. M. Menzi would manage the business to be established with the purchased assets, and that the said J. M. Menzi would receive fifty-one (51%) per centum of the profits accruing from the said business, in addition to a salary of two thousand five hundred (P2,500.00) Pesos, Philippine Currency, a month.

XIII.

That in pursuance of the above-mentioned agreement the said J. M. Menzi, pretending to act under the terms and conditions of the aforesaid license attempted to sell to the said John Bordman, certain assets of the said firm of Behn, Meyer & Co., Ltd., by signing a certain alleged bill of sale in favor of the said John Bordman and delivering to the said John Bordman the said certain assets of the said firm of Behn, Meyer & Co., Ltd., a copy of said alleged bill of sale is attached hereto and made a part hereof and marked "A."

XIV.

That in further pursuance of the said agreement by and between the said defendants the Bank of the Philippine

Islands did in fact advance the funds, cash, capital or credit to the said John Bordman to attempt to complete the said attempted sale of the said assets of the said firm of Behn, Meyer & Co., Ltd.

XV.

That the said agreement by and between the said defendants was contrary to law and in direct violation of the Trading with the Enemy Act and the amendments thereto and the Executive Orders issued thereunder, and to public policy, and all and any act or acts done in pursuance thereto was void and illegal and of no effect whatsoever and against the interests and to the damage of the said Behn, Meyer & Co., Ltd.

XVI.

That the said bill of sale signed by the said defendant J. M. Menzi in favor of the said John Bordman, was illegal, void and contrary to the provisions of the Trading with the Enemy Act and the amendments thereto and the Executive Orders issued thereunder, and contrary to the law of the Philippine Islands and any act or acts done or attempted to be done by virtue of the said bill of sale was void, illegal and of no effect whatsoever, and done in fraud of the said Behn, Meyer & Co., Ltd.

XVII.

That the aforementioned alleged Bill of Sale was not and has not been approved by the Alien Property Custodian and the War Trade Board or by the Alien Property Custodian and/or the War Trade Board, as provided by law.

XVIII.

That on the nineteenth (19th) day of March, in the year 1918, the said firm of Behn, Meyer & Co., Ltd., was the sole owner and possessor of real personal and mixed property, goods in transit, orders in transit, rights, effects (exclusive of patents, trade marks, trade names, labels, prints, copy-

rights and choses in action), which were then in the possession of the said defendant, J. M. Menzi, as manager and director of the said Behn, Meyer & Co., Ltd., and which were worth three million pesos (₱3,000,000.00) Philippine Currency.

XIX.

That the said defendant J. M. Menzi is now in possession of part of the above-mentioned assets and rights and that the said defendant the Bank of the Philippines claims right and interest to and in said assets.

XX.

That all of the above-mentioned assets and rights are the sole property of the said Behn, Meyer & Co., Ltd., and that the said Behn, Meyer & Co., Ltd., has never sold or disposed of the same or any part thereof and that the said Behn, Meyer & Co., Ltd., has the legal right to the same and to the possession of the same.

XXI.

That the said defendant, J. M. Menzi, is now in the possession of the books of account and other books and papers of the said Behn, Meyer & Co., Ltd., and the plaintiff herein has requested the said J. M. Menzi to deliver to the said plaintiff the said books of accounts and other papers and documents now in his possession which belonged, and belong to the said firm of Behn, Meyer & Co., Ltd., but notwithstanding the aforesaid request the defendant J. M. Menzi refused and still refuses to deliver to the said plaintiff the said books of accounts and/or other papers and/or documents belonging to the said Behn, Meyer & Co., Ltd.

XXII.

That the said J. M. Menzi is now in illegal possession of the above set forth property and property rights, books of accounts, papers and documents of the said firm of Behn,

Meyer & Co., Ltd., and refuses to turn over or to deliver to the plaintiff herein the said property or any part thereof.

XXIII.

That the plaintiff herein has requested the said J. M. Menzi to render to the said plaintiff a statement showing the exact status of the said business on the 19th day of March, 1918, and a statement of the conduct of the business of Behn, Meyer & Co., Ltd., subsequent to the said 19th day of March, 1918, and to account to the plaintiff herein for the funds, money, collections, goods and other assets which have come into his hands, and notwithstanding the said request the defendant J. M. Menzi refused to render any statement whatsoever and still refuses and refused and still refuses to account to plaintiff herein for any moneys, funds, collections, goods or other assets which have come into his hands and belonging to the said Behn, Meyer & Co., Ltd.

XXIV.

That the plaintiff herein has requested the defendant The Bank of the Philippine Islands to render the said plaintiff an account of all moneys which were received by the said defendant The Bank of the Philippine Islands, from the said Behn, Meyer & Co., Ltd., and all funds paid out for the said Behn, Meyer & Co., Ltd., since March, 1918, and the said defendant The Bank of the Philippine Islands refused to render the said account or any part thereof and still refuses so to do.

Second Cause of Action.

That as a second cause of action the plaintiff shows and alleges:

XXV.

That the plaintiff herein reproduces paragraphs one (1) to twenty-four (24), inclusive, of the above set forth first cause of action.

XXVI.

That subsequent to the aforesaid attempted sale of certain assets of the said Behn, Meyer & Co., Ltd., by the said defendant J. M. Menzi, as set forth above, the said defendant J. M. Menzi in still further pursuance to and in accordance with the agreement above mentioned by and between the defendants herein, and in conjunction with the defendants John Bordman and The Bank of the Philippine Islands, and in violation of the law and in violation of the terms and conditions of the before-mentioned War Trade License, and in violation of the Trading with the Enemy Act and the amendments and the Executive Orders of the President of the United States, in war time, and the rules and regulations of the President of the United States issued by virtue of and under the provisions of the said Trading with the Enemy Act and the amendments thereto, and in violation of his trust as Manager of the said Behn, Meyer & Co., Ltd., attempted to sell to the said John Bordman at a private sale, and purporting to act under the aforesaid War Trade Board license, certain assets of the said Behn, Meyer & Co., Ltd., which said assets are called "bills receivable," and which are more particularly set forth in the document marked "B" attached hereto and made a part hereof, that said alleged Bill of Sale is illegal, void and of no effect and does not and cannot pass any title whatsoever.

XXVII.

That the said document "B" purports to be a bill of sale by the said J. M. Menzi, purporting and pretending to act for the said Behn, Meyer & Co., Ltd., by virtue and under the terms and conditions of the aforesaid War Trade License, to the said John Bordman, and in pursuance of the aforesaid agreement made by and between the defendants herein, when in truth and fact the said J. M. Menzi was acting in violation of the terms and conditions of the said War Trade

License, in violation of the law and in violation of his trust as Manager of the said Behn, Meyer & Co., Ltd.

XXVIII.

That prior to the date of the execution of the said document "B" and at the time of the execution of the same, the said defendants, and each of them, had personal knowledge, were cognizant, and knew that certain items mentioned in the said document "B" as "accounts receivable" were in truth and fact not accounts receivable owing to and belonging to the said Behn, Meyer & Co., Ltd., and that statements made in the said document "B" were misrepresentations of the actual facts, and were made in further pursuance of the aforesaid agreement by and between the defendants herein, and made with the intention of defrauding the said Behn, Meyer & Co., Ltd., and for the personal gain and pecuniary profit of the said defendants, and made to the damage of the said Behn, Meyer & Co., Ltd.

XXIX.

That the item referred to on page three (3) of the said document "B" as an account receivable owing to and belonging to the said Behn, Meyer & Co., Ltd., and entitled "Emil Lutz, Zurich, ₱178,695.82," purports to and is alleged by the said defendant J. M. Menzi, to represent that one Emil Lutz, of Zurich, Switzerland, owed and was at that time indebted to the said firm of Behn, Meyer & Co., Ltd., to the extent and of the value of the sum of One Hundred and Seventy Eight Thousand Six Hundred and Ninety five pesos and Eighty Two Centavos (₱178,695.82), Philippine currency.

XXX.

That the said defendant John Bordman, in further pursuance of the aforesaid agreement by and between the defendants and with a full knowledge of the true facts, at-

tempted to purchase the above mentioned alleged "account receivable" from the said J. M. Menzi as set forth in the said document "B" for an amount equal to fifteen (15%) per centum of the aforesaid sum of One Hundred and seventy eight thousand six hundred and ninety five pesos and eighty two centavos (₱178,695.82), Philippine Currency, that is to say the said defendant John Bordman, paid to the said J. M. Menzi, on paper, the sum of Twenty six thousand eight hundred and four pesos and thirty seven centavos (₱26,804.37), Philippine Currency, in consideration of this alleged account receivable.

XXXI.

That on the date of the said alleged sale as set forth in the said document "B", to wit: the 25th day of January, 1919, and some time prior thereto, the said defendants, and each of them knew, were cognizant, and had personal knowledge that the said alleged account receivable was not in fact owing by the said Emil Lutz of Zurich, Switzerland, to the said firm of Behn, Meyer & Co., Ltd., nor neither at law nor in equity, nor was any such amount, or any amount, receivable or owing to the said Behn, Meyer & Co., Ltd., from the said Emil Lutz or any other person in Zurich, and that the said alleged facts in document "B" were made with a full knowledge of the facts by the defendants and each of them in fraud of the said Behn, Meyer & Co., Ltd., and for the personal profit and pecuniary benefit of the said defendants and in damage to the said Behn, Meyer & Co., Ltd.

XXXII.

That prior to the attempted sale as set forth above and more particularly described in document "B" the defendant J. M. Menzi, while acting as the manager of the said Behn, Meyer & Co., Ltd., and administering the said business in trust for the shareholders and owners of the said Behn,

Meyer & Co., Ltd., purchased from the defendant The Bank of the Philippine Islands, a bill of exchange, or draft or draft of exchange, in favor of the said Emil Lutz of Zurich, Switzerland, paying to the said defendant The Bank of the Philippine Islands therefor the sum of One Hundred and Seventy Eight Thousand Six Hundred and Ninety Five Pesos and Eighty Two Centavos (₱178,695.82), Philippine Currency, belonging to the said Behn, Meyer & Co., Ltd. and then on deposit with the said defendant The Bank of the Philippine Islands.

XXXIII.

That the said defendant J. M. Menzi received the said bill of exchange, draft or draft of exchange from the said defendant The Bank of the Philippine Islands, and that the said Behn, Meyer & Co. Ltd. and as trustee for the shareholders and owners thereof, did not send or transmit or attempt to send nor transmit, and has not sent, transmitted nor caused to be sent or transmitted the said bill of exchange, draft or draft of exchange to the said Emil Lutz of Zurich, Switzerland, or to any one else in Zurich, but on the contrary retained the possession of the said bill of exchange, draft or draft of exchange until after the execution of the aforesaid document "B."

That in further pursuance of the said agreement by and between the said defendants the Bank of the Philippine Islands did in fact advance the funds, cash, capital or credit to the said John Bordman to attempt to complete the said attempted sale of the said "accounts receivable" of the said firm of Behn, Meyer & Co. Ltd. as disclosed by said document "B."

That the said agreement by and between the said defendants was contrary to law and in direct violation of the Trading With the Enemy Act and the amendments thereto and the Executive Orders issued thereunder, and to public policy, and all and any act or acts done in pursuance thereto was

void and illegal and of no effect whatsoever and against the interests and to the damage of the said Behn, Meyer & Co., Ltd.

That the said Bill of Sale ("B") signed by the said defendant J. M. Menzi in favor of the said John Bordman, was illegal, void and contrary to the provisions of the Trading with the Enemy Act and the amendments thereto and the Executive Orders issued thereunder, and contrary to the law of the Philippine Islands and any act or acts done or attempted to be done by virtue of the said bill of sale was, void, illegal and of no effect whatsoever, and done in fraud of the said Behn, Meyer & Co., Ltd.

That the aforementioned alleged Bill of Sale ("B") was not and has not been approved by the Alien Property Custodian and the War Trade Board or by the Alien Property Custodian and/or the War Trade Board, as provided by law.

That all of the said "accounts receivable" or any funds representing the same are the sole property of the said Behn, Meyer & Co., Ltd., and that the said Behn, Meyer & Co., Ltd., has never sold or disposed of the same or any part thereof and that the said Behn, Meyer & Co., Ltd., has the legal right to the same and to the possession of the same.

Therefore, the plaintiff herein prays:

That in the first cause of action above set forth that the Court order the defendants, and each of them severally, to render a true and correct account of any and all moneys and/or property received by the said defendants and/or any of them, directly or indirectly, from assets belonging to the said firm of Behn, Meyer & Co., Ltd., on January 31, 1917, or at any subsequent time;

That the Court declare that the alleged bill of sale (Exhibit "A") made by the defendant J. M. Menzi and in favor of the said defendant, John Bordman, to be null and void and of no effect;

That the Court order that the defendants, and each of

them to deliver to the plaintiff the property taken by the defendants and/or any of them in pursuance to the said alleged Bill of Sale (Exhibit "A"), and that in the event that the said defendants and/or any of them have not possession of the aforesaid property, then, in that event, the Court order the defendants, and each of them severally to pay to the plaintiff the value of said property and/or any and all sums of money collected by them or any of them from the sale or disposal of the aforesaid property or assets, and together with interest on the value of the said property at the rate of 6% per annum from the 19th day of March, 1918;

For such other relief as the Court deems just and equitable and for the costs of this action.

That in the second cause of action the Court order the defendants, and each of them severally, to render a true and correct account of any and all moneys received by the said defendants, or any of them severally or jointly, in virtue of or in pursuance of the said document, Exhibit "B," or in any other manner, any sums of money, credits or promises, directly or indirectly, from any accounts or choses in action belonging to the said Behn, Meyer & Co., Ltd., on March 19, 1918, or at any subsequent date;

That the Court order and declare that the said alleged bill of sale (Exhibit "B") made by the defendant J. M. Menzi in favor of the said defendant, John Bordman, is null and of no effect;

That the Court order the defendant, and each of them severally, to pay to the plaintiff any and all amounts, collected or received by the defendants, or any of them jointly and/or severally, for all or any of the alleged "accounts receivable," and interest at the rate of 6% per annum on the total amount of the said accounts receivable as shown by Exhibit "B," from the 19th day of March, 1918.

For such other relief as this Court shall deem just and equitable, and for the costs of this action.

Manila, P. I., August 31, 1923.

H. D. GREEN,
SCHWORZKOPF & OHNICK,
Attorneys for Plaintiff.

UNITED STATES,
Philippine Islands,
Manila, ss:

Lazarus G. Joseph, being first duly sworn and exhibiting his cedula No. F-2503 dated January 2, 1923, issued at Manila, deposes and says:

That he is the receiver of the firm of Behn, Meyer & Co., Ltd., and that he has read and understood the foregoing complaint and that the facts alleged therein are true and correct according to his best knowledge and belief.

LAZARUS G. JOSEPH,
Receiver of Behn, Meyer & Co., Ltd.

UNITED STATES OF AMERICA,
Philippine Islands,
City of Manila, ss:

Sworn and subscribed to before me by Lazarus G. Joseph, personally known to me as the person who signed the foregoing affidavit, this 4th day of September, 1923. Affiant exhibited to me his cedula No. F-2503 issued at Manila, on January 2, 1923.

BARTOLOME L. MALLARI,
Notary Public.

My commission expires December 31, 1924.

No. 118, pg. 26, Bk. 1923.

EXHIBIT "A."

Whereas the undersigned, Behn, Meyer & Company, Ltd., was granted license No. ET. 11291 dated March 19, 1918, by the War Trade Board of the United States of America, pursuant to the provisions of the Act of Congress approved October 6, 1917, known as the "Trading with the Enemy Act," the terms and conditions of which license are as follows:

"License is hereby granted to Behn, Meyer & Company, Ltd., a corporation organized under the laws of Straits Settlements, and doing business in the Philippine Islands, to perform such acts as may be necessary to continue the business of the said Behn, Meyer & Co., Ltd., or in alternative to perform such acts as may be necessary for a complete sale, liquidation, and disposition of the business, assets and property of the said Behn, Meyer & Co., Ltd., according as it may seem advisable to the Alien Property Custodian that the business of Behn, Meyer & Co., Ltd., should continue or should be liquidated, sold and disposed of; and in the course of performing such acts to trade with any person, firm or corporation, except an 'enemy' or 'ally of enemy' not holding a license granted under the Trading with the Enemy Act, or a person acting on behalf of, or for the benefit of, such an 'enemy' or 'ally of enemy.'

"Provided, however, that the license may in the discretion and at the direction of the Alien Property Custodian collect, under the provision of the Alien Property Custodian, any sums due from an 'enemy' or 'ally of enemy,' or person acting for, or on behalf of, an 'enemy' or 'ally of enemy.'

"It is a term and condition of this license that:

"(1) All acts performed hereunder shall be carried out under the direction and supervision of the Alien Property Custodian, and in accordance with such plan and method as may be desired by the Alien Property Custodian, and all expenses of such direction and supervision shall be borne by the license;

"(2) The license shall transfer to the Alien Property Custodian as the said Alien Property Custodian may require, the proceeds of any liquidation, sale and disposition, which may occur as aforementioned, either at the termination of the said liquidation, sale and disposition or from time to time during the course thereof;

"(3) A report of the progress of such liquidation, sale and disposition shall be made to the Alien Property Custodian and to the War Trade Board at the time of each calendar month or oftener if required.

"And license is hereby granted to all persons in the United States to participate with **Behn, Meyer & Co., Ltd.**, in any acts which this license may authorize the said **Behn, Meyer & Co., Ltd.**, to undertake."

Now, therefore, these presents witness that by virtue of the foregoing license, and in consideration of the sum of Six Hundred Thousand Pesos (₱600,000.00) Philippine Currency, to it paid by John Bordman of Iloilo, Philippine Islands, the receipt whereof is acknowledged, does hereby sell and convey to said John Bordman, his executors, administrators and assigns, the following property, to wit:

(1) The entire stock of Textiles, Sundries, Drugs, Hardware and Chucherias in its branches located in Manila and Cebu, Philippine Islands, as per Schedule "A" hereto attached.

(2) All Furniture and Fittings as per Schedule "B" hereto attached.

(3) That parcel of land situated in the City of Baguio, Philippine Islands (Lot number 16, in Residence Section "D") consisting of 9307.24 square meters, of which Behn, Meyer & Co., Ltd., is the registered owner, its title thereto being evidenced by Torrens Certificate No. 247 in the land records of the City of Baguio.

(4) Trade-marks as per Schedule "C" hereto attached belonging to the business of Behn, Meyer & Co., Ltd., in the Philippine Islands.

(5) The leasehold interest held by Behn, Meyer & Co., Ltd., in the premises of 180-184 Calle Juan Luna, Manila.

(6) The good-will of the business of Behn, Meyer & Co., Ltd., in the Philippine Islands. Good-will in this connection shall be understood to include all cable codes, cuts, electroplates, customer lists and all other accessories to enable the buyer to conduct the business in its accustomed way.

Neither the undersigned nor the United States nor the Alien Property Custodian nor any representative, or agent, or agency thereof, shall be held or admitted to make any representation or guaranty, express or implied, concerning or in any way respecting such property or business, or any information concerning the same.

This sale has been made under the provision and with the approval of the Alien Property Custodian, and in accordance with the terms and conditions of the aforesaid license.

Signed at Manila, Philippine Islands, this 22nd day of January, 1919.

BEHN, MEYER & CO., LTD.

(Sgd.)

J. M. MENZI,

Manager.

Signed in the presence of:

(Sgd.) P. A. BEOMAN.

(Sgd.) J. M. DE JESUS.

Acknowledgment.

UNITED STATES OF AMERICA,

Philippine Islands:

In the City of Manila, on this 23rd day of January, 1919, personally appeared J. M. Menzi known to me to be the same person who executed the foregoing instrument and acknowledged the same to be his free act and deed. Said Mr. Menzi exhibited his cedula F11441 issued at Manila, P. I., on January 17, 1919.

Before me,
(Sgd.)

S. W. O'BRIEN,
Notary Public.

My commission expires December 31, 1919.

Approved:

A. MITCHELL PALMER,
Alien Property Custodian,
(Sgd.) By DOUGLASS M. MOFFAT,
Managing Director for the Philippine Islands.

CITY OF MANILA,

Philippine Islands, ss:

In the City of Manila, on this 23d day of January, 1919, personally appeared Douglass M. Moffat known to me to be the same person who executed the foregoing instrument and acknowledged the same to be his free act and deed. Said Mr. Moffat did not exhibit any cedula being exempt from this tax on account of his being a non-resident of and temporarily in these islands.

Before me,
(Sgd.)

S. W. O'BRIEN,
Notary Public.

My commission expires December 31, 1920.

Notarial Register, No. 42, page 92, book 4.

EXHIBIT "B."

Whereas the undersigned Behn, Meyer & Company, Ltd., was granted License No. ET-11291 dated March 19, 1918, by the War Trade Board of the United States of America, pursuant to the provisions of the Act of Congress approved October 6, 1917, known as the "Trading with the Enemy Act," the terms and conditions of which license are as follows:

"License is hereby granted to Behn, Meyer & Company Ltd. a corporation organized under the laws of Straits Settlements, and doing business in the Philippine Islands, to perform such acts as may be necessary to continue the business of the said Behn, Meyer & Company Ltd. or in the alternative, to perform such acts as may be necessary for a complete sale, liquidation and disposition of the business, assets, and property of the said Behn, Meyer & Co., Ltd., according as it may seem advisable to the Alien Property Custodian that the business of Behn, Meyer & Co. Ltd. should continue or should be liquidated, sold and disposed of; and in the course of performing such acts to trade with any person, firm or corporation, except an 'enemy' or 'ally of enemy' not holding a license granted under the Trading with the Enemy Act, or a person acting on behalf or, or for the benefit of, such an 'enemy' or 'ally of enemy.'

"*Provided, however,* that the licensee may in the discretion and at the direction of the Alien Property Custodian collect, under the supervision of the Alien Property Custodian, any sums due from an 'enemy' or 'ally of enemy' or person acting for or in behalf of an 'enemy' or 'ally of enemy.'

"It is a term and condition of this license that:

"1. All acts performed hereunder shall be carried out under the direction and supervision of the Alien

Property Custodian and in accordance with such plan and method as may be desired by the Alien Property Custodian, and all expense of such direction and supervision shall be borne by the licensee;

"2. The licensee shall transfer to the Alien Property Custodian as the said Alien Property Custodian may require, the proceeds of any liquidation, sale, and disposition, which may occur as aforementioned, either at the termination of the said liquidation sale and disposition, or from time to time during the course thereof;

"3. A report of the progress of such liquidation, sale and disposition shall be made to the Alien Property Custodian and to the War Trade Board at the end of each calendar month or oftener if required.

"And license is hereby granted to all persons in the United States to participate with Behn, Meyer & Co. Ltd. in any acts which this license may authorize the said Behn, Meyer & Co. Ltd. to undertake."

Now, therefore these presents witness that by virtue of the foregoing license, and in consideration of the sum of Sixty Thousand Pesos (₱60,000.00) Philippine Currency, to it paid by John Bordman of Manila, Philippine Islands, the receipt of which is acknowledged does hereby sell and convey to said John Bordman, his executors, administrators, and assigns, the following accounts receivable, together with all vouchers, entries and other proofs of the Indebtedness, to wit: Charge Not. No. 967 re "Sachsen" Hg./T'tau 12: *P. 20.71*; Charge Note No. 1102 re "Suevia" Hbg./Wladi 19: *P. 4.40*.—E. Meyer & Co., Tientsin: *P. 177.36*.—E. Engler, Saigon: *P. 50.00*.—R. Wesener, Tientsin: *P. 30.18*.—Julius Norden, Hamburg: *P. 48.87*.—Thoresen & Co. Shanghai: *P. 0.56*.—Speidel & Co., Saigon: *P. 7.09*.—Capt. Heyenga P/war: *P. 3*.—P. Bernhardt, Hamburg: *P. 1848.27*.—P. Weinschenk P/war: *P. 322.57*. A. Villeta, Manila: *P. 93.50*.—

Dierrieh Braun P/war: *P. 14.11.*—J. H. Fincke: P/war: *P. 6383.40.*—Gebr. Brunschweiler, Hauptweil: *P. 28,599.27.*—Alwin Readler, Berlin: *P. 278.12.*—A. Schonberg, P/war: *P. 10.00.*—Deutscher Maschinenbau, Pekin: *P. 23.204.20.*—Telge & Schroeter, Tientsin: *P. 754.68.*—Gravenhorst & Co. New York: *P. 19,392.16.*—Goods in transit: *P. 286.01.*—Stickerei Feldmühle, Rohrschach: *P. 628.67.*—Emil Lutz, Zurich: *P. 178,695.82.*—Esslingen Commission Receivable: *P. 1521.67.*—Thomoshiro Tanaka Osaka: *P. 123.40.*—Iwai & Co., Kobe: *P. 82.68.*—United Alkali Co. Liverpool: *P. 48.18.*—United Supply Co., San Francisco: *P. 924.65.*—Pacific Mail S. S. Co., Claim Acc.: *P. 919.69.*—Meerkamp & Co., Claim Acc.: *P. 53.41.*—Smith Bell & Co., Claim Acc.: *P. 5.10.*—W. F. Stevenson & Co. Claim Acc.: *P. 51.50.*—S. S. "Kafue," Claim Acc. *P. 190.20.*—S. S. Chinese Price, Claim Acc. *P. 838.98.*—North German Lloyd, Bremen: *P. 14.713.08.*—Deutsch-Australische Dampfschiffs-Ges., Hamburg: *P. 27,900.16.*—Deutsche Sudsee Phosphat Ges. Hamburg: *P. 1,138.01.*—M. Jebsen, Apenrade: *P. 11,625.28.*—Deutsch-Dampfschiffs-Ges. "Hansa" Hamburg: *P. 135.58.*—Melchers & Co., Shanghai: *P. 866.82.*—"Albingia" Insurance Co. Hamburg: *P. 1,138.03.*—"Allianz" Insurance Co. Berlin: *P. 55.84.*—Western Assurance Co. Toronto: *P. 28.79.*—Samarang Sea & Fire Assur. Co., London: *P. 43.75.*—North German Insurance Co. Hamburg: *P. 8,707.96.*—Trade Debtors: *P. 2,774.00.*—Robert Dollar Co. Claim Acc.: *P. 377.50.*—Dampfsch. Reederei "Union" Hamburg: *P. 100.00.*—G. F. Schlostelborg, Seattle *P. 22,476.64.*—H. J. Bell & Co. Manila: *P. 1,012.93.*—Versicherungs-Gesellschaft, Hamburg: *P. 38,155.47.*—China Mail S. S. Co., Claim Acc.: *P. 58.93.*—Ricardo Aguado, Manila: *P. 1,250.00.*

Cebu:—(Per November 30th, 1916) Sander Wielerx & Co., Hongkong: *P. 13.70.*—Jose Hagedorn, Cebu: *P. 2,536.56.*—Sundry Acct.: *P. 42.80.*—Outstanding Claims: *P. 2,078.40.*—Special Debtors *P. 104.14.*

Iloilo.—(Per December 31, 1918) Refund unexpired premiums Hamburg Insurances *P. 319.45*:—Refund unexpired premiums on Lloyds policies *P. 2,892.95*:—Neuss, Hesslein & Co., New York: (*P. 128.64* less Manila liability *P. 52.98*) *P. 75.66*:—Outstanding claims *P. 167.28*:—Goods in Transit *P. 2,413.94*.

Zamboanga.—(Per December 31, 1918.) Guttapercha consigned to New York: *P. 342.17*:—Lumber consigned to London *P. 4,245.07*:—Foreign Currency exchange (o/Germany. *P. 100.00*:—Jaffee & Sons, Manchester: *P. 461.46*:—Produce contractors *P. 1,135.73*:—Copra Venders *P. 794.12*:—Town Current Accts. (*P. 4,086.76* less depreciation *P. 3,774.97*) or *P. 311.79* less payments in 1919, *P. 192.79*:—Outstation Current Accts. (*P. 2,068.95* less depreciation *P. 1,020.67*) *P. 1,048.28*.

Neither the undersigned nor the United States nor the Alien Property Custodian nor any representative, or agent, or agency thereof, shall be held or admitted to make any representation or guarantee, express or implied, concerning or in any way respecting such accounts receivable.

This sale has been made under the supervision and with the approval of the Alien Property Custodian, in accordance with the terms and conditions of the aforesaid license.

Signed at Manila, Philippine Islands, this 24th day of January, 1919.

BEHN, MEYER & CO., LTD.,

(Sig.)

By J. MENZI,

Manager.

Signed in the presence of:

(Sig.)

A. S. CROSSFIELD.

J. MA. DE JESUS.

UNITED STATES OF AMERICA,
Philippine Islands:

In the City of Manila, on this 24th day of January, 1919, personally appeared J. M. Menzi known to me to be the same person who executed the foregoing instrument and acknowledged the same to be his free act and deed. He exhibited his cedula F-11441 issued at Manila on January 17th, 1919.

Before me,
(Sig.)

S. W. O'BRIEN,
Notary Public.

My Commission expires Dec. 31, 1920.
Notarial Register No. 44, p. 92, book IV.
Approved:

A. MITCHELL PALMER,
Alien Property Custodian,
(Sig.) By DOUGLAS M. MOFFAT,
Managing Director for the Philippine Islands.

UNITED STATES OF AMERICA,
Philippine Islands:

In the City of Manila on this 24th day of January, 1919, personally appeared Douglas M. Moffat, known to me to be the same person who executed the foregoing approval and acknowledged the same to be his free act and deed. He did not exhibit a cedula, being exempt from this tax on account of being a non-resident of and but temporarily in the Philippine Islands.

Before me,
(Sig.)

S. W. O'BRIEN,
Notary Public.

My Commission expires Dec. 31, 1920.

EXHIBIT E.

IN THE SUPREME COURT OF THE UNITED STATES.

BEHN, MEYER & Co., LIMITED, Plaintiff,

AGAINST

THOMAS W. MILLER, as Alien Property Custodian of the United States, and FRANK WHITE, as Treasurer of the United States, Defendants.

Amended Complaint.

The plaintiff, Lazarus G. Joseph, Receiver of Behn, Meyer & Co., Limited, respectfully represents:

1. That since December, 1905, the plaintiff has been and at all times hereinafter mentioned was a corporation organized and existing under the laws of Singapore, Straits Settlements, a Crown colony of the United Kingdom of Great Britain and Ireland.

2. The defendant Thomas W. Miller is a resident of the District of Columbia, and is now and since on or about March, 1921, has been the duly appointed, qualified and acting Alien Property Custodian, and is sued herein as the incumbent of said office. That the said defendant is the successor in said office of one Francis P. Garvan, who in turn was the successor of A. Mitchell Palmer, the first incumbent of said office, and said defendant as such officer is possessed of the right, property and interests owned or held by and subject to the obligations, duties and liabilities imposed by the laws of the United States upon his said predecessors in office.

3. The defendant Frank White is a resident of the District of Columbia and since on or about April, 1921, has been the duly appointed, qualified and acting Treasurer of

the United States, and is sued herein as the incumbent of said office.

4. This is a suit of Civil nature brought under the laws of the United States, namely, the Act of Congress known as the Trading with the Enemy Act, approved by the President October 6, 1917, and the acts amendatory thereto, and the Executive Orders and actions proclaimed and done in alleged conformity thereto, and also under and in conformity with the general jurisdiction and powers of this Court, and at the date of the commencement thereof eighteen months had not elapsed after the "end of the war" as prescribed and defined in said acts of Congress.

5. The plaintiff is not now and never has been an "enemy" or "ally of enemy" as defined in said acts of Congress, and never has been proclaimed by the President as included within the said terms or either of them; it is not now and never has been a resident, or incorporated within, or done business within any part of the territory (including that occupied by the military or naval forces) of any nation with which the United States is or at any time since April 6, 1917, was at war. It is not now and never has been a resident within, or incorporated within, or done business within any part of the territory (including that occupied by the military or naval forces) of any nation with which the United States now is or at any time since said date was at war.

6. That heretofore, and prior to February, 1918, the plaintiff had applied to the government of the Philippine Islands to be admitted to do business in the Philippine Islands as a foreign corporation, under the laws, rules and regulations of the Philippine Islands. That on the 5th day of February, 1907, the said plaintiff was regularly admitted and licensed to do business in the Philippine Islands, subject to the laws, rules and regulations of the Philippine Islands, and that the management of the said business in the Philip-

pine Islands was under the supervision and control of one J. M. Menzi, a citizen of the Swiss Republic.

7. That the business of the plaintiff was, in February, 1918, and for a considerable period prior thereto had been a valuable and going concern; and that in February, 1918, Francis Burton Harrison, purporting to act as the representative of the Alien Property Custodian in the Philippine Islands, caused to be seized the property of the plaintiff in the Philippine Islands and appointed as "Receiver" one W. D. Pemberton; that the aforesaid action being reported to the Alien Property Custodian that official disclaimed any such authority and such acts, whereupon the said Francis Burton Harrison, acting as the Governor General of the Philippine Islands, requested the War Trade Board to issue an Enemy Trading License for the corporation of Behn, Meyer & Co., Limited, and an Enemy Trading License No. 11291 was issued in consequence thereof for the corporation of Behn, Meyer & Co., Limited; and that by virtue of said Enemy Trading License the said W. D. Pemberton continued to supervise the business, affairs and property of the plaintiff; that the said supervisor, together with the said J. M. Menzi, the manager of Behn, Meyer & Co., Limited, in the Philippine Islands, and under the terms of the aforesaid War Trade Board License the person to sign and act for Behn, Meyer & Co., Limited, thereafter purporting to act under the terms of the Trading with the Enemy Act in collusion with John Bordman, an employee of the office of the Alien Property Custodian in the Philippine Islands, did purport to liquidate and sell the properties of your plaintiff as is more particularly set forth in a complaint to the Court of First Instance of Manila, Philippine Islands, a copy of which is attached hereto, marked for identification Exhibit "A" and prayed to be taken and read as a part hereof; and that the said Menzi, the said Pemberton, the said Bordman and the said Bank of the Philippine Islands acting in con-

cert for the purpose of defrauding the plaintiff, wrongfully and illegally paid and caused to be paid to an employee of the Alien Property Custodian large sums of money belonging to the plaintiff, which said sums of money were by the said employee paid into the Treasury of the United States, where they still are, and that the recovery from the defendants of these said sums of money is the object of this suit.

8. That the taking over and seizure of said property and assets of the plaintiff in the Philippine Islands, and the application for and the issuance of a War Trade License, and the said supervision and continued holding of the properties of the plaintiff was wrongful and illegal; that the purported sales, conveyance, transfer, assignment, delivery, and payment to the Alien Property Custodian and the Treasurer of the United States, were illegal, wrongful and void; and that the plaintiff was not an "enemy" or "ally of enemy" whose property or assets could be lawfully taken over or seized or supervised or conveyed, assigned, delivered or paid to the Alien Property Custodian or the Treasurer of the United States, within the true meaning and intent of the terms of the said Act of Congress; that on the contrary it was a corporation duly licensed as a foreign corporation in the Philippine Islands, incorporated in the Straits Settlements (which is the territory of a nation associated with the United States in the recent war) and was not a resident within, or doing business within the territory of any nation with which the United States was at war, or an ally of such nation; and that the said assets and property so taken over, seized, supervised, conveyed, transferred, assigned, delivered and paid as aforesaid were owned at the time of such taking, seizure, supervision, conveyance, transfer, assignment, delivery and payment by a citizen of another nation other than Germany, Austria, Hungary, or Austria-Hungary, namely, by the plaintiff, a citizen of Great Britain; and that all of the stock of the said corporation of Behn, Meyer & Co., Limited, at the time of the seizure, and for over three years next prior thereto

belonged to and was owned by the Public Trustee of Great Britain, not a citizen or subject of an enemy nation or ally thereof; that no legal determination was ever made under the Trading with the Enemy Act that the plaintiff was an "enemy" or "ally of enemy," or that said property and assets were enemy property and assets; and that no due and lawful demand for said property and assets, or any part thereof, as required by law, was ever made or served on plaintiff; that the exact amount so received by the Alien Property Custodian and the Treasurer of the United States is unknown to plaintiff, but he has been informed and believes, that it exceeds One million two hundred thousand dollars (\$1,200,000.00), which said moneys are now in the possession, control and custody of the defendants herein, and who are wrongfully withholding the same from plaintiff, and who are and have been receiving the income therefrom.

9. That heretofore, and subsequent to such seizure, taking over, supervision, conveyance, transfer, assignment, delivery and payment as aforesaid of said property and assets to the Alien Property Custodian and the Treasurer of the United States the plaintiff as required by Section 9 of the said Trading with the Enemy Act, duly filed with the said Alien Property Custodian a sworn notice of its claim to said property and assets and to the proceeds and avails thereof paid over to the Alien Property Custodian and/or the Treasurer of the United States and/or received by them or either of them as aforesaid.

10. The Straits Settlements hereinbefore referred to are a part of the British Empire and territory of the United Kingdom of Great Britain and Ireland, which is a nation associated with the United States in the prosecution of the recent war, and said nation in like cases extends reciprocal rights to citizens of the United States.

Wherefore plaintiff prays:

(1) That the defendants Thomas W. Miller, Alien Property Custodian, and Frank White, Treasurer of the United States, be ordered to answer this amended bill of complaint, but not under oath, the answer under oath being hereby specifically waived;

(2) That the said defendants and each of them be directed to deliver to plaintiff to be administered according to law and the rules and orders of the Court of First Instance of Manila, all of said property and assets seized, taken over, supervised, conveyed, transferred, assigned, delivered or paid to the Alien Property Custodian or the defendant, the Treasurer of the United States as aforesaid, and now in the possession, custody or control of the above named defendants or either of them;

(3) That the said defendants and each of them be directed to pay over to plaintiff herein, to be administered as above indicated, the proceeds or avails of any alleged sale or liquidation or other disposition of any and all property and assets of Behn, Meyer & Co., Limited, or from the defendants in the above cited cause filed in the Court of First Instance of Manila by the said plaintiff and against the said John Bordman, J. M. Menzi and/or the Bank of the Philippine Islands, and/or from W. D. Pemberton, together with all income or interest accrued or realized thereon;

(4) That the defendants and each of them be directed to account to plaintiff for said property and assets, interest and income;

(5) That the plaintiff have such other and further relief as to the Court may seem just and equitable.

MARION BUTLER,
JOHN W. CLIFTON,
HENRY D. GREEN,

*Attorneys for Lazarus G. Joseph, as Receiver of
Behn, Meyer & Co., Limited, of the Philippine Islands.*

UNITED STATES,

District of Columbia, ss:

Marion Butler, John W. Clifton, and Henry D. Green, being first duly sworn, depose and say, each for himself, that they are the attorneys for Lazarus G. Joseph, Receiver of Behn, Meyer & Co., Limited, of the Philippine Islands, and that they, and each of them, have read the foregoing amended bill of complaint and know the contents thereof and that the same are true to the best of their knowledge and belief.

MARION BUTLER.
JOHN W. CLIFTON.
HENRY D. GREEN.

Sworn to before me this 27th day of October, 1924, in the City of Washington, District of Columbia.

[SEAL.]

C. JACKSON KEBLINGER,
Notary Public, D. C.

My commission expires Oct. 30, 1926.

[Endorsed:] In the Supreme Court of the United States. Behn, Meyer & Co., Limited, Plaintiff, vs. Thomas W. Miller, as Alien Property Custodian of the United States, and Frank White, as Treasurer of the United States, Defendants. Intervention. Marion Butler, Henry D. Green, John W. Clifton, Attys. for Pff.

[Endorsed:] File No. 30231. Supreme Court U. S., October Term, 1924. Term No. 343. Behn, Meyer & Company, Ltd., Appellant, vs. Thomas W. Miller, as Alien Property Custodian, &c., *et al.* Petition and motion of Lazarus G. Joseph, Receiver, &c., for leave to intervene, and Exhibits A to E, inc. Filed October 27, 1924.

Office Supreme Court, U. S.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1924.

No. 843.

BEHN, MEYER & COMPANY, LIMITED, APPELLANT,

vs.

THOMAS W. MILLER, AS ALIEN PROPERTY CUSTODIAN OF
THE UNITED STATES, AND FRANK WHITE, AS TREAS-
URER OF THE UNITED STATES, APPELLEES.

**SUPPLEMENTAL BRIEF ON BEHALF OF LAZARUS
G. JOSEPH, RECEIVER OF BEHN, MEYER & COM-
PANY, LIMITED, AND PETITIONER FOR LEAVE
TO INTERVENE.**

MARION BUTLER,
JOHN W. CLIFTON,
HENRY D. GREEN,

Counsel for Lazarus G. Joseph, Receiver, etc.



SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1924.

No. 343.

BEHN, MEYER & COMPANY, LIMITED, APPELLANT,

vs.

**THOMAS W. MILLER, AS ALIEN PROPERTY CUSTODIAN OF
THE UNITED STATES, ET AL.**

**SUPPLEMENTAL BRIEF ON BEHALF OF LAZARUS
G. JOSEPH, RECEIVER, ETC.**

Supplementing their former brief filed herein, counsel for Lazarus G. Joseph, petitioner for leave to intervene, respectfully submit the following:

Supplementing their remarks concluding the first paragraph on page 66 of the brief, counsel for the petitioner submit that though they have searched diligently they have not been able to find any case holding directly on this point which supports the contention of the plaintiff as set out in

the answer to the motion of your petitioner and considered on pages 64-66 of your petitioner's brief. It is settled law that the mere pendency of an appeal, though it operate as a supersedeas, does not prevent all action in the premises by the parties involved. Indeed it has been held that the pendency of an appeal from a judgment in appellant's favor does not prevent him from instituting proceedings to revive the judgment. *Weiller vs. Blanks, McGloin*, 296.

Counsel also submit for the consideration of the court the case of *Grant vs. Phœnix Mut. Life Ins. Co.*, 121 U. S., 118, the synopsis of which under the heading *Receivers* in the *Century Digest* is: Pending an appeal from a final decree with a supersedeas, a receiver obtained an order from the court directing the expenditure of funds to repair the properties to save it from waste; held no error, since the supersedeas simply suspended action in regard to executing the final decree and the order in question was confined simply to the preservation of the properties.

While this case is not squarely in point, it is submitted that it indicates the reasoning upon which the power of the receiver to bring this petition of intervention may properly be based. This action by the receiver is necessary to preserve the property. If the petitioner is ultimately held to have been rightfully appointed, then he and not these present plaintiffs are entitled to the fund here in question. Even if the corporation were properly before the court and were properly bringing this proceeding, it could not recover this money as against the receiver of its business in the Philippine Islands, as has been pointed out fully in the brief of the petitioner at page 80. To hold, therefore, that though the force and effect of the order removing him is stayed yet

the receiver cannot here intervene, would be to hold that the receiver must during the pendency of the appeal be powerless to protect in case of need the assets of the company of which he is receiver from being dissipated and purloined. Such cannot be the law, and it is respectfully submitted, such will not be the ruling of this court.

Supplementing their remarks concluding the second paragraph on page 66 of the brief, counsel for the petitioner respectfully calls the attention of the Court to Sections 123 and 144 of the Code of Civil Procedure of the Philippine Islands:

SECTION 123. No interlocutory or incidental ruling, order, or judgment of the Court of First Instance shall stay the progress of an action or proceedings therein pending, but only such ruling, order or judgment as finally determines the action or proceeding nor shall any ruling, order or judgment be the subject of appeal to the Supreme Court until final judgment is rendered to one party or the other.

SECTION 144. Except by special order of the court, no execution shall issue upon a final judgment rendered in the Court of First Instance until after the period for perfecting a bill of exceptions has expired. But the filing of a bill of exceptions shall of itself stay execution until the final determination of the action, unless for special reasons stated in the bill of exceptions the court shall order that execution be not stayed, in which event execution may at once issue. But the Court may require as a condition of a stay of execution that a bond shall be given reasonably sufficient to secure the performance of the judgment appealed from in case it shall be affirmed in part or wholly.

We submit that under the above sections of the Code by the perfecting of a bill of exceptions in the case of Behn, Meyer & Co., Ltd., *vs.* Stanley *et al.* the force and effect of the order vacating the receiver is stayed, and that the receivership remains in sufficient force and effect to permit the receiver to intervene in this proceeding.

We submit that this case is controlled by the above section for the reason that the action of the court in dismissing this receiver is a judgment within the meaning of the statute.

The term "judgment" is susceptible of a broad or a narrow construction. Its broad sense is the decision or sentence of the law given by a court or other competent tribunal as the result of proceedings instituted therein. In the broad sense here defined a decision of any court is a judgment including courts of equity, admiralty and probate.

It is submitted that judgment as used in this statute should not be confined to the narrow sense of the decision of the court in a law case.

"The final determination of a cause is a judgment." 33 C. J. 1050. "The word 'judgment' includes all that is meant by the words order, decision, decree or judgment." Halbert *vs.* Alford, 16 S. W., 814, where the court construed the word judgment under the code practice of Texas.

The essential feature of "judgment" is that it shall be final and conclude the parties. In this sense final orders, although not technical judgments, are judgments within this sense for the reason that they conclude the parties.

The disposition of a writ of *habeas corpus* has been held to be a judgment within the Code of Civil Procedure of Montana in State *vs.* Newell, 35, p. 28.

"Under most codes of procedure, judgments are defined

in substance as the final determination of the rights of the parties in an action or proceeding." 33 C. J., 1049. It is submitted that this action of Judge Diaz, which it is to be noted is called "resolution" and not "order," is a judgment within the meaning of the statute for the reason that it concludes the parties.

It is not interlocutory. It is a proceeding which "may in effect put an end to the action and present a judgment from which appeal might be taken." 3 C. J., 438, where the proceedings are set out from which an appeal may be taken.

It is to be noted in this case that the appeal is taken by writ of error on exception. That is to say, the appellant goes up to the Supreme Court as of right on a final proceeding and not with leave of the appellate court on some interlocutory proceeding.

It is submitted that the effect of a stay of these proceedings such as is effected by the taking of an appeal is to entirely prevent any enforcement of the order vacating the receiver. "The general rule is that a supersedeas or stay does not vacate the judgment, order, or decree appealed from or reverse, annul, or undo what has already been done under it, but does suspend all further proceedings thereon or as to any matter embraced therein and prevents, pending the appeal, any steps to enforce or carry the same into effect. 3 C. J., 1319.

"The general rule is that the effect of a supersedeas or stay is to suspend proceedings and preserve the *status quo* pending the determination of the appeal or proceeding in error." 3 C. J., 315, citing many cases.

It is submitted further that Section 144 of the Code above cited was not intended to and does not limit the stay of pro-

ceedings provided in it solely to cases in which a money judgment is involved, but provides in general for the prevention of carrying into effect of any proceeding by the court which amounts to a judgment in the broad sense above set forth. That execution is not to be confined to a money judgment alone has been held in the following cases:

State vs. Cline, 39 S. W., 272, where it was held:

"The term execution with reference to a stay of execution during proceedings on appeal comprehends not merely the ordinary writ of execution to collect money, but also any and all process to enforce any affirmative command of a judgment whatsoever its nature."

and, again, in *State vs. Hirzel*, 37 S. W., 921, where it was held:

"That the enforcement of an interlocutory order for the appointment of a receiver is within the scope of the term execution."

It is submitted that the enforcement of an order which is not interlocutory for the removal of a receiver is equally within the scope of the term "judgment." This can scarcely be doubted when sections 123 and 144 of the Code are read together.

Supplementing their remarks on page 67 of the brief, wherein reply is made to the contention of the plaintiff that the removal of the petitioner has been upheld by the Supreme Court of the Philippine Islands, counsel for the petitioner respectfully call the attention of the court to the following statement of the law in this regard, which occurs in 34 Cyc., at page 146:

"Whenever the court has jurisdiction of the subject-matter and of the necessary parties its action in regard to the appointment of a receiver cannot be questioned in collateral proceedings, whether erroneous or not. However erroneous such an order may be, it is binding, not only upon the parties, but upon everyone and everywhere, until it is vacated in a direct application, or reversed by superior authority. *Shields vs. Coleman*, 157 U. S., 168; *Gumby vs. Armstrong*, 66 C. C. A., 627; *Shinney vs. Savings Co.*, 97 Fed., 9; *Grand Trunk R. R. Co. vs. Central R. R. Co.*, 85 Fed., 87; *Clark vs. Brown*, 57 C. C. A., 76; and if the party to the suit whose property is placed in the hands of a receiver is bound by the order or decree, no one can attack it. *Grand Trunk R. R. Co. vs. Central R. R. Co.*, *supra*.

Since counsel for the plaintiff can only support his above-mentioned allegation by the decision of the Supreme Court of Philippine Islands in the case of *Behn, Meyer vs. Hamburg Amerika Line*, it is submitted that the above statement entirely refutes his contention. Any attack made in the case of *Behn, Meyer vs. Hamburg Amerika Line* upon a receiver appointed in the case of *Behn, Meyer vs. Stanley et al.* would of necessity be collateral. If the Supreme Court of the Philippine Islands in the case of *Behn, Meyer vs. Hamburg Amerika Line* has in fact passed upon the validity of the appointment of Joseph as receiver, then it is reversible error on appeal to this court. The order of Judge Harvey stands until reversed by superior authority, which so far has not occurred; or until directly attacked, which was done in the motion of Menzi to vacate the receivership. This action

of Judge Diaz has been appealed and has not yet been decided. Therefore the Supreme Court of the Philippine Islands has not yet properly decided that Joseph is not receiver for Behn, Meyer and Co., Ltd.

MARION BUTLER,
JOHN W. CLIFTON,
HENRY D. GREEN,

Counsel for Lazarus G. Joseph, Receiver, etc.

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Office Supreme Court, U. S.

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1924.

No. 343.

BEHN, MEYER & COMPANY, LIMITED, APPELLANT,

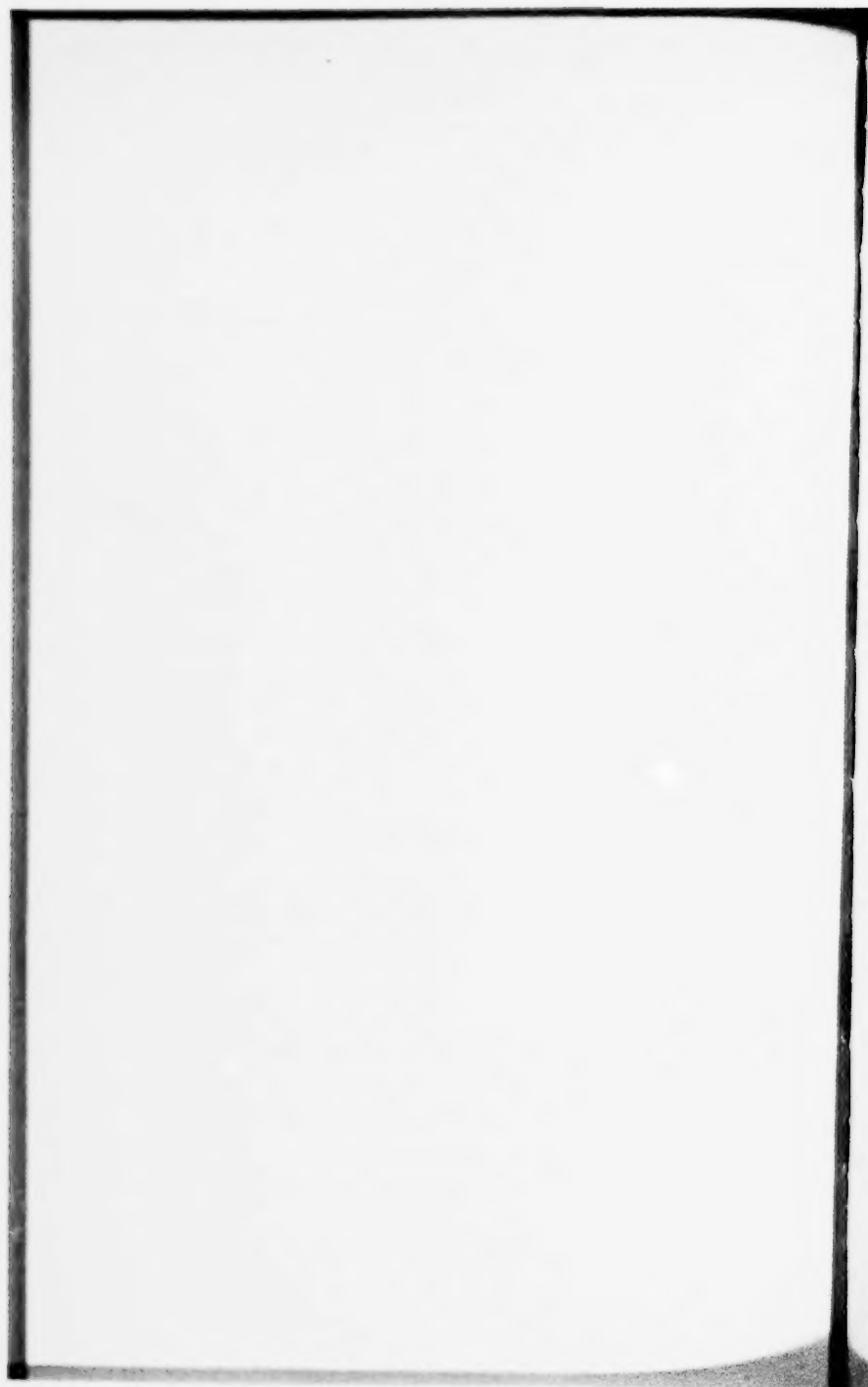
vs.

THOMAS W. MILLER, AS ALIEN PROPERTY CUSTODIAN,
AND FRANK WHITE, AS TREASURER OF THE UNITED
STATES, APPELLEES.

**BRIEF ON BEHALF OF LAZARUS G. JOSEPH, RE-
CEIVER OF BEHN, MEYER & CO., LIMITED, AND
PETITIONER, FOR LEAVE TO INTERVENE.**

MARION BUTLER,
JOHN W. CLIFTON,
HENRY D. GREEN,

Counsel for Lazarus G. Joseph, Receiver, etc.



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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1924.

No. 343.

BEHN, MEYER & COMPANY, LIMITED, APPELLANT,

vs.

**THOMAS W. MILLER, AS ALIEN PROPERTY CUSTODIAN OF
THE UNITED STATES, ET AL.**

**BRIEF ON BEHALF OF LAZARUS G. JOSEPH, RE-
CEIVER AND PETITIONER, FOR LEAVE TO IN-
TERVENE.**

I.

Statement of the Case.

Behn, Meyer & Company, Ltd., was organized and incorporated at Singapore, in the Straits Settlements, in the year 1905. It was a British Corporation and, therefore, a British citizen. In 1907 the Corporation of Behn, Meyer & Company, Ltd., desiring to do business in the Philippine Islands, made application for a license to be issued to them for that

purpose. On February 5, 1967, the license was issued by the Division of Archives, Government of the Philippine Islands, which permitted the Corporation of Behn, Meyer & Company of Singapore to engage in business in the Philippine Islands. Under this license, Behn, Meyer & Company traded in the Philippine Islands and built up a distinct business therein. They maintained their office, warehouse, etc., in Manila and at other points in the Philippine Islands, and there thus was created a distinct business entity, the business of Behn, Meyer & Company, in the Philippine Islands, which was an asset of Behn, Meyer & Company, Ltd., or, expressed differently, was a part of the general business activities of the Corporation of Behn, Meyer & Company, Ltd., which had its domicile at Singapore. (See page 112.)

Upon the outbreak of the war between England and Germany in 1914, the British Public Trustee seized the Corporation of Behn, Meyer & Company, Ltd. The British Public Trustee, however, did not come into the Philippine Islands and take possession of the assets of the Corporation which existed there, that is to say, the business of Behn, Meyer & Company, Ltd., in the Philippine Islands. The Philippine Islands Office, under the charge of J. M. Menzi, its manager, continued to do business. It was already in possession of and it continued to acquire property and assets and also to assume debts and other liabilities to creditors. These creditors were basically creditors of Behn, Meyer & Company, Ltd., of Singapore, but primarily they were the creditors of the business of Behn, Meyer & Company in the Philippine Islands.

After the declaration of war between the United States and Germany and the passage of the Trading With the Enemy

Act, Francis Burton Harrison was appointed managing director for the Philippine Islands of the Alien Property Custodian, A. Mitchell Palmer. By letter dated *February 16, 1918*, Mr. Harrison informed Behn, Meyer & Company, Ltd., Manila, that Mr. W. D. Pemberton had been appointed receiver of "Behn, Meyer & Company, Ltd.," to assume charge of the business and assets of the said firm as a going concern and to submit weekly reports to the said Mr. Harrison. (See page 43.) Harrison also seized physical possession of the plant and effects of Behn, Meyer by the armed force of his constabulary. (See page 113.)

This action of Mr. Harrison was repudiated by the Alien Property Custodian as it was an entirely illegal action. Mr. Harrison thereafter applied to the War Trade Board for a license under the Trading With the Enemy Act for Behn, Meyer & Company, Ltd., which license permitted Behn, Meyer & Company to continue its business or in the alternate to liquidate its business according as the Alien Property Custodian might deem advisable. (See pages 88-89-113.) This license was illegally forced on Behn, Meyer & Company, as will hereafter be shown, but under Pemberton's supervision it continued its business until February, 1919. Sometime during the year 1918 Menzi formulated his plan to steal the assets of Behn, Meyer & Company, Ltd., which consisted of going through the forms of selling the properties, real and personal, of the Corporation to one John Bordman, official receiver of certain enemy concerns under the Alien Property Custodian in the Philippine Islands, for a price far below their value, using the funds of Behn, Meyer & Company, Ltd., then on deposit in the Bank of the Philippine Islands for this nefarious transaction, and then to cover

the fraud by reporting to the Alien Property Custodian the money purporting to represent the purchase price. (See pages 86-101 and 113-114.)

The plan thus devised was put into action as follows:

On *January 2, 1919*, Douglas M. Moffat, managing director for the Alien Property Custodian in the Philippine Islands, wrote to Behn, Meyer & Company stating that it was the desire of his office that liquidation under the War Trade Board license be completed without further delay and if not completed the license would be revoked and the property sold at public auction. (See page 43.) On January 9, 1919, John Bordman resigned his official position as receiver under the Alien Property Custodian by letter, now on file in the Custodian's office in Washington. *On the 23d day of January, 1919*, Menzi executed on behalf of Behn, Meyer & Company a bill of sale to John Bordman whereby he sold him the entire stock of merchandise, all the furniture and fittings, a parcel of land, trade-marks, and leasehold interest in cable codes, cuts, electrical plates, and customers' lists, etc., belonging to Behn, Meyer & Company in the Philippine Islands. The consideration for this sale was 600,000 ₪. The sale was approved by Douglas M. Moffat. (See pages 45-47.)

On the same day, *January 23, 1919*, the said Douglas M. Moffat, acting in his official capacity, again wrote to J. M. Menzi, manager of Behn, Meyer & Company, stating that it was the desire of his office that the accounts receivable by Behn, Meyer & Company in the Philippine Islands should be sold under the license granted by the War Trade Board. This letter states that the such sale may be made with their approval to one John Bordman "who was the purchaser of the

assets of the business at public sale thereof held by you." (See page 44.)

On the following day, *January 24, 1919*, Menzi, acting for Behn, Meyer & Company, executed a bill of sale of accounts receivable by Behn, Meyer & Company, Ltd., of the Philippine Islands. Consideration was 60,000 ₪. The sale was approved by Douglas M. Moffat.

Thus far Menzi's plan had worked smoothly. He had sold, when under the War Trade License, he had been required to sell by the Directing Manager of the Alien Property Custodian for the Philippine Islands, and the sales had been approved by this official. Menzi now had in his possession 660,000 ₪ of Behn, Meyer & Company's money, advanced by the Bank of the Philippine Islands to John Bordman as the purchase money for such sales. It, therefore, became necessary to dispose of this money in order to maintain the seeming regularity of the proceeding. This might have been, and in fact should have been done under the authority contained in the license itself. For some reason, however, it was decided by Menzi and his confederates to do it under the Trading With the Enemy Act, and Section 2 (c) of the Executive Order of February 26, 1918.

On February 21, 1921, an alleged demand for enemy money was made upon Pemberton as receiver of Behn, Meyer. (See pages 67-70.) This demand declared that Behn, Meyer had been determined to be an "enemy," recited that Pemberton on February 19, 1919, had reported money of Behn, Meyer as held by him, and required him to pay such to the Alien Property Custodian. This demand was remarkable in that although the blank, on which it was made, contained a space for the insertion of the name of the authorized depos-

itary to whom such money should be paid, yet no name of any dipostary was filled in, and in that it was not signed by any official, not even by Moffat, but simply initialed "P. B. P.," which are the initials of P. B. Pope, a clerk in Moffat's office.

On *February 28, 1919*, the same P. B. Pope signed a letter on behalf of Douglas M. Moffat, addressed to "W. D. Pemberton, receiver of Behn, Meyer & Company, Ltd.," in which aknowledgment was made of the receipt of 392,674.96 ₣ "paid in answer to our demand, dated February 21, 1918." The letter further stated that "formal acquittance will be mailed you direct from our Washington office." (See page 55.)

The illegality of this demand and receipt and the obvious inconsistency of using them upon a company which rightfully or wrongfully was operating under a War Trade license, are matters which will be dealt with at length hereafter. At this point suffice it to call the attention of the court to the fact that Pemberton paid over only 392,674.96 ₣ out of the 660,000 ₣ which must have been in his hands if the sales of January had been *bona fide*, and that no formal acquittance was ever mailed to him from Washington.

Matters remained in this condition until February, 1922, when an event happened which changed the entire situation and lead ultimately to this petition of intervention. On *February 24, 1922*, A. N. Juredini & Brothers, intervener in an action of replevin brought by Behn, Meyer & Company in 1917 against Stanley *et al.*, Insular Collector of Customs, recovered a judgment against Behn, Meyer & Company. (See pages 24-32.) On *April 6, 1922*, execution was issued upon the judgment and was returned un-

satisfied on *April 8*. (See page 34.) The return showed that Menzi now disclaimed any responsibility for Behn, Meyer & Company, and stated that all the properties had been taken over by the Alien Property Custodian, sold, and the proceeds transferred to Washington. On August 8, Jureidini applied for the appointment of a receiver, calling attention of the court to the return of the sheriff, and alleging that there were interests and choses in action, which the receiver could collect. On *August 10, 1922*, Lazarus G. Joseph, was appointed receiver by George R. Harvey, Judge of the Court of First Instance of Manila, the order of the court showing it was fully advised as to the state of affairs obtaining in regard to Behn, Meyer. Lazarus G. Joseph posted bond and took oath of office *August 10*. (See pages 33-37.)

In the meantime, an attempt was made to continue the process of spoiling this company, and depriving its creditors in the Philippine Islands of the assets to which they were entitled. Three of the original incorporators of Behn, Meyer & Company, E. L. Lorenz-Meyer, A. D. Laspe and F. H. Witthoefft, who were German subjects, and enemies under the British and American Trading with the Enemy Act, and who represented themselves to be the sole surviving stockholders of Behn, Meyer & Company, Ltd., of Singapore, held an alleged extraordinary stockholders' meeting at Hamburg, Germany, at which they elected directors, constituted themselves the consulting committee of the Company with plenary powers, and as stockholders voted to bring this suit. There in exercise of their self-conferred authority, they as consulting committee, executed a power of attorney to one Emil W. Martens, and this Martens proceeded to bring suit

against the Alien Property Custodian in the name of Behn, Meyer & Company, Ltd., for the return of the moneys paid to the Alien Property Custodian, as the proceeds of the sale of the assets of Behn, Meyer & Company, as above described. (See page 113, and original Bill of Complaint in Supreme Court of District of Columbia.) On *July 28, 1922*, the case of Behn, Meyer & Company, Ltd., vs. Miller et al., was commenced in the Supreme Court of the District of Columbia. A motion to dismiss was filed *September 15, 1922*. On *March 2, 1923*, the court sustained the motion, and on *March 23*, entered a final decree dismissing the bill. On *April 11, 1923*, the case was appealed to the Court of Appeals of the District of Columbia.

Returning to events in the Philippine Islands, it appears that in May, 1923, Joseph as receiver brought suit in the Court of First Instance, Manila, to revive a judgment recovered by Behn, Meyer in 1917 against the Hamburg-Amerika Line. The suit was demurred to on the ground, among others, that the Court had no jurisdiction. The demurrer was overruled by Judge S. del Rosario. Continuing his efforts to collect the assets of Behn, Meyer on *August 1, 1923*, Joseph as receiver for Behn, Meyer & Company wrote to Menzi, former manager of Behn, Meyer & Company, requesting that the books of Behn, Meyer be turned over to him. On *August 3, 1923*, Menzi replied declining to turn over the books. (See page 56.)

On *August 31*, Joseph as receiver for Behn, Meyer & Company sued Menzi, Bordman and The Bank of the Philippine Islands in the Court of First Instance, Manila, alleging as follows:

(1) That the War Trade license was issued in March, 1918.

(2) That Bordman was an employee of the Alien Property Custodian in 1919 and by law could not deal with any property subject to the supervision of the Alien Property Custodian for his own benefit.

(3) That Menzi was a Swiss citizen and by law prevented from dealing for his own benefit with Behn, Meyer & Company.

(4) That notwithstanding the law Menzi and Bordman agreed that Menzi purported to act under the terms of the aforementioned license should sell to Bordman the assets of the firm of Behn, Meyer & Company and that the Bank of the Philippine Islands agreed to furnish the money to purchase the assets.

(5) That Menzi did execute bills of sale in favor of Bordman and the Bank advanced the cash for the sale.

(6) That for the reasons above set forth the sale was void and illegal and was not approved by the Alien Property Custodian or the War Trade Board.

(7) That the real and personal property owned by Behn, Meyer & Company in March, 1918, was worth 3,000,000 ₪.

(8) That Menzie is now in possession of part of the above mentioned assets; that Menzi further purported to sell to Bordman under the said War Trade license bills receivable by Behn, Meyer & Company.

(9) That the accounts set forth in the said bill of sale of bills receivable were false and fraudulent.

(10) That one item in said bill of sale, namely, 178,695.82 ₱ owed by Emil Lutz, Zurich, to Behn, Meyer & Company was attempted to be bought by Bordman for the sum of 26,804.37 ₱; that there never was such an act in existence, but that prior to the attempted sale Menzi used the funds of Behn, Meyer & Company to purchase from the Bank of the Philippine Islands a bill of exchange in favor of Emil Lutz in the sum of 178,695.82 ₱, which bill of exchange he did not transmit to Emil Lutz but retained until after the execution of the bill of sale.

And the receiver prays that Menzi, Bordman and the Bank of the Philippine Islands be required to account for the funds of Behn, Meyer & Company received by them and to deliver to the receiver all of the property of Behn, Meyer & Company taken by the defendants. (See pages 86-101.)

Having filed his bill the receiver continued his efforts to obtain the books of the Company. On *September 5, 1923*, Joseph, as Receiver, petitioned the Court of First Instance of Manila for a rule to show cause why the said Menzi should not deliver the books of Behn, Meyer & Company to him, which rule issued the same day over the signature of Diaz, judge, requiring Menzi to answer within seven days. On *September 13*, Menzi filed an answer to the rule in which he stated that on the 16th day of February, 1918, all the business and assets of Behn, Meyer were taken over by the Alien Property Custodian; that all the assets were sold under the supervision of the Alien Property Custodian to John M. Bordman; that the books of account had been delivered to the said Bordman, and that the said Joseph was not the legal receiver of Behn, Meyer & Company.

This activity of the receiver in bringing suit and vigorously pushing his demand for the books was viewed with alarm by Menzi and his confederates. Also it was not the sort of activity likely to be favorably regarded by those bringing suit in Washington for the return of the 600,000 ₪ by the Alien Property Custodian as above described. Therefore an attempt was made to put a stop to it, by eliminating the receivership.

On *September 14, 1923*, Bordman, Menzi and the Bank of the Philippine Islands moved to intervene in the receivership proceedings for the purpose of making a motion to vacate the order of August 10 whereby Joseph had been appointed receiver of Behn, Meyer & Company, and, when leave to intervene had been granted, they filed their said motion. (See pages 57-70.) On *September 17, 1923*, an opposition to said motion was filed on behalf of said Joseph. (See pages 71-74.) On *September 26, 1923*, Diaz, substitute judge of the Court of First Instance, disregarded the finding of fact made by Judge Harvey in appointing the receiver and the decision of Judge del Rosario in sustaining the appointment, regular, judges of the Court of First Instance and removed the receiver on the palpably untenable ground that the court presided over by Judge Harvey had not been informed of the sale by Menzi of the properties of Behn, Meyer. (See pages 75-79.)

On *October 1, 1923*, *Jureidini & Joseph* moved for a reconsideration, which was denied under date of *December 3, 1923*, by the said Diaz. (See pages 80-82.)

The receiver, however, refused to accept the decision of the Court of First Instance, or to give up his efforts to collect the assets of the corporation from those who had in

effect stolen them. By the laws of the Philippine Islands, an appeal would act as a supersedeas and keep the receivership alive, therefore, under date of *December 12, 1923*, Joseph & Jureidini filed exceptions to the said order of Diaz denying their motion for reconsideration and gave notice of their intention to perfect a bill of exceptions. On *May 14, 1924*, the bill of exceptions was tendered. On *May 19* it was certified by Judge Harvey, Regular Judge of the Court of First Instance. On the *28th day of May* it was certified by the Clerk of the Supreme Court and by him filed in the Supreme Court of the Philippine Islands. (See pages 82-85.)

In the meantime on *February 11, 1924*, the Court of Appeals D. C. had dismissed the appeals in Behn, Meyer & Company vs. Miller et al. On *March 8, 1924*, an appeal to the Supreme Court of the United States was allowed. Joseph, therefore, proceeded promptly to prepare the necessary certified copies of papers deemed necessary to support this intervention, upon the arrival of which in Washington this intervention was prepared and filed.

✓ In the meantime we are informed that the Supreme Court of the Philippine Islands has decided the case of Behn, Meyer vs. Hamburg-Amerika Line in favor of the appellants, a decision which will be dealt with in due course.

II.

Argument in Support of the Motion to Intervene.

(a) LAZARUS G. JOSEPH IS RECEIVER OF BEHN, MEYER & COMPANY IN THE PHILIPPINE ISLANDS.

The basic reasons for asking leave to intervene in this case are set out in the motion and petition of your inter-

venor, the receiver, with exhibits and amended petition in this cause attached already filed in this court.

The attorneys for the plaintiff in this suit in their answer to the said petition to intervene have attacked at great length the appointment of Lazarus G. Joseph as receiver; have set up the fact that he was removed from his receivership; have argued that he never was properly receiver and finally, have attacked his right to intervene even granting that he was properly appointed and is now receiver.

Answering such contention we submit:

(1) *Lazarus G. Joseph Was Properly Appointed Receiver.*

In support of this contention it must first be pointed out that the record in this case itself discloses the entire regularity and propriety of his appointment by Judge Harvey in the Court of First Instance, Manila.

In January, 1917, Menzi, manager of Behn, Meyer in the Philippines, filed suit on behalf of Behn, Meyer against Stanley, Collector of Customs, and by submitting the case to the court submitted to the jurisdiction of the court at that time. This suit was an action of replevin in which Behn, Meyer replevied seven cases of cotton goods from the collector. A. N. Jureidini & Bros. intervened, claiming the goods belonged to them. On February 28, 1918, the Court rendered a decision favorable to Behn, Meyer, and A. N. Jureidini & Bros., appealed from that decision to the Supreme Court. The Supreme Court on the 1st day of October, 1919, reversed the decision of the Court of First Instance of Manila, and remanded the cause to the Court of First Instance for a new trial. Again Menzi on behalf of Behn, Meyer came into the Court of First Instance in January, 1922, and still alleging under oath the facts set

up in the first complaint regarding jurisdiction submitted the same to the Court of First Instance for decision on the merits of the case. The Court of First Instance of the City of Manila, by Judge Geo. R. Harvey, rendered a decision on February 24, 1922, in favor of the appellant A. N. Jureidini & Bros., and against the plaintiff, Behn, Meyer & Company, Ltd.

Thereupon a writ of execution was issued against the property of the judgment debtor, Behn, Meyer & Company, Ltd., on or about April 6, 1922, and was returned unsatisfied, the return showing that J. M. Menzi for the first time during the whole period of six years disclaimed interest in or responsibility for the firm of Behn, Meyer & Company, Ltd., and stated that the properties had been taken over by the Alien Property Custodian and the goods sold and the funds removed from out of the jurisdiction to Washington, D. C. The record shows that on June 8, 1922, an *alias* execution was issued upon the same judgment, but was returned unsatisfied on June 14, 1922.

That on August 8, 1922, the judgment creditor applied to Judge Harvey, the same judge who had decided the case in February, 1922, for the appointment of a receiver for the property, assets, and estate of Behn, Meyer & Company, Ltd. The application alleges:

"That your petitioner is informed and believes and so states the fact to be that the plaintiff above named, the judgment debtor herein, has subsequent to the initiation of the above action, but prior to the rendition of the final judgment herein, ceased to actively conduct its business with the Philippine Islands and has forfeited its corporate right to do so and is insolvent, but has within the Philippine Islands and

within the jurisdiction of this court sufficient assets, consisting of various divers interests in properties and choses in action, to satisfy the judgment herein, but that the same cannot be secured to be applied upon the judgment herein without the appointment of a receiver to collect and preserve said assets."

Judge Harvey, of the Court of First Instance of Manila, under date of August 10, 1922, placed the property, assets, and estate of the plaintiff, Behn, Meyer & Company, Ltd., under a receivership and appointed the present Lazarus G. Joseph the receiver, stating in his order:

"It appearing to the court therefrom that executions have been issued upon said judgment, both against the plaintiff named and against its bondsmen, and that returns thereon have been made by the sheriff of Manila showing that no property of said plaintiff or its bondsmen can be found within the jurisdiction of this court to satisfy said judgment herein and that said plaintiff had ceased actively to conduct its said business within the Philippine Islands and had forfeited its corporate right to do so and is insolvent, and that execution cannot be made against its bondsmen for the reason that they and each of them have been deported from the Philippine Islands and no property of said bondsmen can be found within the Philippine Islands upon which to levy execution; and it further appearing that said plaintiff may have assets which might be applied upon said judgment herein if the same be located and brought within the jurisdiction of the court, and in order to protect the judgment creditor herein it is necessary that a receiver be appointed to collect and preserve the assets and estate of said plaintiff, and being fully advised in the premises;"

It remains to point out that the receiver thus appointed was a statutory receiver, such as is provided for by the Philippine Code, as follows:

“RECEIVER OF A CORPORATION.—When a corporation has been dissolved, or is insolvent, or is in imminent danger of insolvency, or has forfeited its corporate rights, the Court of First Instance of the province where the corporation has its principal place of business may, on complaint of a creditor of the corporation, or a stockholder or member thereof, appoint a receiver to take charge of its estate and effects, and to collect the debts and property due and belonging to the corporation, and to pay the outstanding debts thereof, and to divide the money and other properties that shall remain over among the stockholders or members.”

Under this statute the court has a right on any one of the three grounds named to appoint a receiver. The Court of First Instance found as a fact that the statutory ground of insolvency existed; and, besides that, there might be assets found and recovered by a receiver. Therefore it is submitted that without more it is thus satisfactorily established that your intervener was legally appointed receiver and takes precedence and priority over any stockholders or any other person.

The plaintiff herein, however, in its answer to the petition of intervention, alleges that the appointment of your petitioner was at all times void, and it attempts to support this allegation by alleging facts the purpose of which is to substantiate a claim that the appointment was invalid because all the assets and properties of Behn, Meyer & Company had

been sold and the proceeds paid over to the Alien Property Custodian. From this it is argued that there was nothing of which Joseph could be receiver.

Your intervener in reply will show this honorable court that the properties and assets of Behn, Meyer & Company, Ltd., were never lawfully seized or set aside or paid over to the Alien Property Custodian or any other person, and that therefore Judge Harvey was entirely correct in finding that there were assets which the receiver might collect and administer.

Francis Burton Harrison, Governor General of the Philippine Islands and managing director for the Alien Property Custodian in the Philippine Islands, on the 19th day of February, 1918, seized the properties of Behn, Meyer. In the answer of the plaintiff in this present proceeding, on page 3, it is alleged that Harrison took possession of the property of Behn, Meyer & Company on behalf of the Alien Property Custodian. This is an error. Mr. Harrison may have taken possession of the property of Behn, Meyer & Company and in fact did so with armed force, but he did not do so on behalf of the Alien Property Custodian, as his action was repudiated by that official when brought to his attention. Mr. Harrison then applied for the issuance of a War Trade license to Behn, Meyer & Company, and this was done March 19, 1918, and W. D. Pemberton was appointed receiver or supervisor by the said Harrison. The legality of the issuance of this license will hereafter be discussed. At this point it is sufficient, and at the same time of essential importance to note that it was issued and forced on Behn, Meyer & Company and continued in force during the events now to be set forth.

The license having been issued, nothing more occurred for the next ten months. W. D. Pemberton pretended to continue to supervise the affairs of Behn, Meyer under the license, but he turned over no property; he did not even make the monthly reports which by the terms of license he was required to do if liquidation were in process. The next occasion when action was taken in regard to Behn, Meyer was January 2, 1919, when the process of the spoliation and looting of this company began in wholesale form.

On January 2, 1919, Douglas M. Moffat, by this time appointed Managing Director for the Alien Property Custodian in the Philippines, wrote to Menzi, the manager of Behn, Meyer & Company, as follows:

UNITED STATES OF AMERICA:

The Alien Property Custodian,

Office of the Managing Director in the Philippine
Islands, Manila.

JANUARY 2, 1919.

DEAR SIR: A license authorizing the complete liquidation of the business of Behn, Meyer & Co., Ltd., in the Philippine Islands, was granted by the War Trade Board of the United States to the company under date of March 19, 1918. I am authorized to state to you that it is the desire of this office that the liquidation be completed under this license without further delay by you, acting under your power of attorney from the Company. The liquidation should be effected by Public sale held on approximately two weeks' advertisement. Otherwise the li-

cense will be revoked and the property sold at Public sale to produce the same effect, by this office under the Trading with the Enemy Act.

Yours very truly,
(Sgd.) DOUGLAS M. MOFFAT,
Managing Director for the Philippine Islands.

At this stage of the proceedings John Bordman appears as one of the principal actors. Bordman had been appointed in November, 1918, as official receiver for the Alien Property Custodian of Struckman & Company, and was also acting in the same capacity for several concerns, for all of which he was paid a monthly salary by the Alien Property Custodian. After Moffat had written his letter of January 2, Bordman resigns his position under Moffat on January 9th, and on January 23 purports to buy from Menzi all the property of Behn, Meyer, except the accounts receivable.

On that same day, January 23, Moffat again wrote Menzi as follows:

UNITED STATES OF AMERICA:

The Alien Property Custodian,
Office of the Managing Director in the Philippine
Islands, Manila.

JANUARY 23, 1919.

DEAR SIR: Referring to our letter to you of the second inst., I am further authorized to state to you that it is the desire of this office that the accounts receivable, belonging to the business of Behn, Meyer & Co., Ltd., in the Philippines, be sold by you, acting under your power of attorney from the company and under the license for the liquidation of the business of Behn,

Meyer & Co., Ltd., granted by the War Trade Board of the United States. This sale may be made with our approval by private sale to Mr. John Bordman, who was the purchaser of the assets of the business at public sale thereof held by you, provided you find his to be the best offer obtainable. Otherwise, the license will be revoked and the accounts receivable sold by this office under the Trading with the Enemy Act.

Yours very truly,
 (Sgd.) DOUGLAS M. MOFFAT,
Managing Director for the Philippine Islands.
 Mr. J. M. Menzi, Manila, P. I.

Following this letter there was another bill of sale from Menzi to Bordman of all the accounts receivable.

These facts alone were sufficient ground for the receiver of Behn, Meyer to attack these sales as fraudulent. The entire properties of a company valued by the Alien Property Custodian at 1,400,000 ₪ (see Answer, page 6) had been sold for 600,000 ₪, less than half of its value, and accounts receivable of a face value of 436,948 ₪ had been sold for 60,000 ₪, less than one-seventh their value. Such transactions are intrinsically suspicious. Added to them, however, is the fact that Bordman, an employee of the Alien Property Custodian, resigned just after such order was made by the Managing Director for the Custodian and just before such sales are made, and who furthermore is designated by the Managing Director as the person to whom one of the sales can be made. The resignation of Bordman was obviously for the purpose of acting as a dummy to buy this property at such pretended sale.

Furthermore the Act of March 28, 1918, provides as follows:

"Any person purchasing property from the Alien Property Custodian for an undisclosed principle or for resale to a person not a citizen of the United States or for the benefit of a person not a citizen of the United States shall be guilty of a misdemeanor * * * and the property shall be forfeited to the United States."

John Bordman did not purchase this property for himself; he transferred it after he had bought it to a company known as the J. M. Menzi Company, in which J. M. Menzi owned at least 50 per cent of the stock. Menzi was not a citizen of the United States. The purchase by Bordman was clearly for the benefit of Menzi since Bordman immediately transferred the property to a company in which Menzi had the majority interest.

Menzi, however, claimed, as he did in the sheriff's return, that the property had been taken over by the Alien Property Custodian, which was obviously untrue. The receiver at once attacked the validity of the whole transaction of the sale of the properties of Behn, Meyer & Company, by virtue of the Act above cited.

Under such circumstances the sales become more than suspicious. There is made out the clearest kind of *prima facie* case of fraud. All these matters existed at the time of Joseph's appointment as receiver, and they alone adequately justify that appointment. Indeed, having been appointed, the receiver, as was his duty to do, has filed suit in Manila against Menzi, Bordman, and the Bank of the Philippine Islands in which he attacks these sales as fraudulent and prays the court to order the return to Behn, Meyer & Co., Ltd., of the property out of which it was defrauded (see page 86 of the petition to intervene).

Turning from the transactions between Menzi and Bordman, and directing attention to the payment to the Alien Property Custodian of 660,000 ₣, which found itself in the possession of Menzi as a result of the alleged sale, it becomes apparent that this payment was invalid and illegal upon the face of it, and that the appointment of a receiver to set it aside and recover the money was amply justified.

On February 18, 1919, a demand was made upon Pemberton, as receiver of Behn, Meyer, in the following form:

MR. W. D. PEMBERTON,

Receiver Behn, Meyer & Co., Ltd.:

Address: Manila, P. I.

I, A. Mitchell Palmer, Alien Property Custodian, duly appointed, qualified, and acting under the provisions of the act of Congress known as the "Trading with the Enemy Act," approved October 6, 1917, and the executive orders issued in pursuance thereof, by virtue of the authority vested in me by said act and by said executive orders, after investigation, do determine that:

(Name of enemy or ally of enemy:) Behn, Meyer & Co., Ltd., whose address is (last known address:) Singapore, Strait Settlements, is an enemy (not holding a license granted by the President), and has a certain right, title, and interest in all that certain money, and property mentioned and particularly described in your report to the Alien Property Custodian, dated February 19th, 1919, as owing or belonging to, or held for, by, on account of, or behalf of, or for the benefit of, the "person" hereinabove mentioned, together with all interest accrued thereon to date of payment to the Alien Property Custodian, and all dividends or accumulations thereon whatso-

ever now in your possession or which may hereafter come into your possession.

I, as Alien Property Custodian, do hereby require that the said money and property together with said dividends or accumulations shall be by you conveyed, transferred, assigned, delivered, and paid over to me, as Alien Property Custodian, to be by me held, administered, and accounted for as provided by law.

The ——— is hereby designated as depositary, and is authorized to receive for and on behalf of the Alien Property Custodian, the property herein mentioned, and upon the service of this demand on you by said depositary you are directed to deliver the said property to it forthwith. For money demanded, checks may be delivered to the depositary, which in all cases should be made payable to the Alien Property Custodian.

Witness my hand and seal of office, this 21st day of February, 1919.

A. MITCHELL PALMER,
Alien Property Custodian.
DOUGLAS M. MOFFAT,

(Sgn) By P. B. P.,
Managing Director for the Philippine Islands.

This demand upon its face is illegal and void. It was not made by the Alien Property Custodian; it was not made by any person authorized by him to make it; it is not signed by A. Mitchell Palmer; it is not signed by A. W. Moffat, although it purports to be signed for him, as his name appears on it "by P. B. P." This P. B. P. stands for P. B. Pope, who was a clerk in the office of the Alien Property Custodian in the Philippine Islands. The form of demand used is shown above and is A. P. C. Form #106B Demand For Money and Property. It is a form which sets out

certain extracts of the Trading with the Enemy Act (not set out above) and was printed in order that the clerks who did the actual manual labor in writing the forms would not make mistakes. It appears in this form three different times that the Alien Property Custodian may demand from a person holding property of any enemy not granted a license by the President. The demand states that Behn, Meyer & Co., Ltd., whose address is Singapore, Straits Settlements, is an enemy not holding a license granted by the President. This is so flagrant a perversion of the truth, that it is difficult to believe it was not deliberately done. On the 21st day of January, Menzi sold this property, reciting the terms of that license. Moffat, from whose office this demand issued, officially ordered him to sell on January 2, 1919, stating that he must sell under the terms of his power of attorney from the Company and under the terms of that license. The reason for stating that Behn, Meyer & Co., Ltd., was an "enemy not holding a license" is, however, sufficiently plain.

To justify a "demand" it is a *sine qua non* that the Alien Property Custodian, himself, made the "determination" that the person whose property is "demanded" is an "enemy." If the Alien Property Custodian "determines" that the "person" is "an enemy" then he may or MAY NOT issue a "demand." That is discretionary with the Alien Property Custodian, except where the "enemy" holds a War Trade Board License, or an "enemy" Trading License. If the person whom the Alien Property Custodian has "determined" to be an "enemy" holds an Enemy Trading License, granted under the same Act, then the hand of the Alien Property Custodian is STAYED and he cannot lawfully "demand" its property. As long as the War Trade Board License is un-

revoked the Alien Property Custodian is without any authority to "demand" the property of the licensee. The most he could do is order the Company wound up under the license.

In order, therefore, that the demand of February 18, 1919, might at least seem regular in part, it perforce had to state that Behn, Meyer was "an enemy not holding a license."

Behn, Meyer & Company, Ltd., held a license issued under the provisions of the Trading with the Enemy Act. This license was E. T. License No. 11291, and dated March 19, 1918. The Alien Property Custodian was, therefore, prohibited, by law, from demanding the property of Behn, Meyer & Co., Ltd.; and the demand was palpably illegal.

The void demand having been made, Pemberton paid over certain moneys, and received a receipt therefor in the following form:

UNITED STATES OF AMERICA:

The Alien Property Custodian.

OFFICE OF THE MANAGING DIRECTOR IN THE PHILIPPINES, MANILA.

February 28th, 1919.

MR. W. D. PEMBERTON,

Receiver Behn, Meyer & Co., Ltd., Manila, P. I.

DEAR SIR:

Report: 50426; Reporter: Behn, Meyer & Co., Ltd., Manila, P. I.

Trust: 50238; Enemy: Behn, Meyer & Co., Ltd., Singapore, S. S.

I wish to acknowledge receipt of \$392,674.96 in this case, paid in answer to our demand dated February 21st, 1918.

Formal acquittance will be mailed you direct from our Washington office.

Yours truly,

DOUGLAS M. MOFFAT,

Managing Director for the Philippine Islands,
(Sgd.) By P. B. POPE.

This receipt was an instrument without force or effect whatever. It is not signed by Moffat, but by the same P. B. Pope who initialed the demand. This clerk Pope had no authority to give any acquittance which could relieve Pemberton of his duty to account for the money of Behn, Meyer, and this he knew, as he says such acquittance will be mailed from Washington. No such acquittance ever was mailed.

Furthermore, it should be noted that the demand and receipt together are redolent of fraud because had this been a bonafide transaction some authorized bank or trust company would have been named as depository to whom the enemy funds should be paid. This was not done. The space in the "demand" for the insertion of the name of the depository was left blank.

Now under this state of facts, every one of which had happened before the appointment of Joseph as receiver, can it be doubted that his appointment was not justified. A large sum of money had been withdrawn from Behn, Meyer & Co. and paid over to the Alien Property Custodian upon a demand clearly void, and for this money no valid acquittance could be shown. The property is apparently disposed

of under a War Trade License, the proceeds of that property are disposed of by a procedure which can only obtain a semblance of legality by denying the existence of that license. The purpose of making this demand of February 18, 1919, is clear. Section (2) (c) of the Executive order of February 26, 1918 provides:

"Any demand shall be made and notice thereof given, as hereinbefore provided, such demand and notice shall forthwith vest in the Alien Property Custodian such right, title, interest and estate in and to the possession of the money or other property demanded and such power or authority thereover as may be included within such demand."

The purpose, therefore, in issuing this demand was to obtain title for the Alien Property Custodian in the sums of money then in the possession of Menzi, as managing director of Behn, Meyer & Company. But the fact that it was made is a striking corroboration of the contention of your intervener, which will next be considered, that the War Trade License issued to Behn, Meyer February 19, 1918, was void from the beginning. If that license had been valid there would have been no need to employ the machinery of a "demand" to bring all the proceeds of the sale of Behn, Meyer assets into the hands of the Alien Property Custodian. Under the license they could have been paid to no one else. Not only was the "demand" superfluous; it could not be used where a license existed. There can, therefore, be but one explanation of the issuance of this demand. The men intent on obtaining possession of the property of Behn, Meyer knew the War Trade License was not valid. They knew that it was no authority for the disposition of the property of Behn, Meyer,

and that ultimately that disposition could be set aside and the property recovered. For no other reason would they have resorted to the "demand," whose only function could be to vest in the Alien Property Custodian title to the property of Behn, Meyer.

Thus far it has been shown that Judge Harvey was fully justified in appointing a receiver for Behn, Meyer because upon their face both the sale to Boardman and the payment to the Alien Property Custodian bore all the marks of fraudulent transactions which ought to be set aside.

There remains to be considered the War Trade License issued to Behn, Meyer. The plaintiff herein contends in its answer that all the property of Behn, Meyer having been disposed of validly under that license there was nothing for the receiver to administer, and his appointment was consequently improper. The answer of the plaintiff on page 3 alleges that this license was issued to facilitate the carrying and liquidation of Behn, Meyer & Company by the Alien Property Custodian. It, however, can have been issued for no such purpose in view of the fact that the Alien Property Custodian had repudiated the acts of Harrison in seizing the company and had thereby equally repudiated the idea that Behn, Meyer & Company was an enemy or the ally of an enemy.

Indeed, the issuance of this War Trade License and the appointment of W. D. Pemberton as supervisor of Behn, Meyer & Company was a wholly unwarranted and illegal proceeding. Section 4, Trading with the Enemy Act, provides that an enemy may apply for a license, and regulates the issuing, suspension, and revoking of such licenses. Section 7 (c) of the Trading with the Enemy Act provides that there

shall be paid to the Alien Property Custodian money, etc., belonging to an enemy or an ally of an enemy not holding a license granted under this act. The issuing of a license to one not an enemy was a purposeless proceeding. If it was taken in good faith by Harrison in this instance it was done so upon the mistaken idea that Behn, Meyer & Company was an enemy. If, however, Behn, Meyer & Company was not an enemy the action of issuing the War Trade License was wholly illegal and unwarranted.

It is submitted that Behn, Meyer & Co., Ltd., of Singapore is not and was not an enemy or the ally of an enemy, but on the contrary is "a corporation organized or incorporated within any country other than Germany, Austria, Hungary or Austria-Hungary, and that the control of * * * such corporation, was at such times, and is at the time of the return of the money or other property vested in citizens or subjects of nations, states or free cities * * *" other than the enemy countries named.

Treaties.

Article 14 of the Treaty between the United States of America and His Britanic Majesty of 1794, and commonly referred to as the "Jay Treaty," is as follows:

"There shall be between all the dominions of His Majesty in Europe and the territories of the United States, a reciprocal and PERFECT LIBERTY of commerce and navigation. The people and inhabitants of the two countries, respectively, shall have liberty freely and securely, and without hindrance and molestation, to come with their ships and cargoes to the lands, countries, cities, ports, places and

rivers, within the dominions and territories aforesaid, and to remain and reside there, without any limitation of time. Also to hire and possess houses and warehouses for the purpose of their commerce, and generally the merchants and traders on each side shall enjoy the **MOST COMPLETE PROTECTION** and **SECURITY** for their commerce; **BUT SUBJECT ALWAYS** as to what respects this article to the **LAWS** and **STATUTES** of the two countries respectively."

The declaration affording reciprocal protection to trade-marks between the United States of America and the government of Her Majesty the Queen of the United Kingdom of Great Britain and Ireland of 1877 is, in part, as follows:

"The subjects, **OR CITIZENS** of each of the contracting parties shall have, in the dominions and possessions of the other, the same rights as belong to native subjects, **OR CITIZENS**, or as are now granted or hereafter may be granted to the subjects, and **CITIZENS** of the most favored nation, in everything relating to property in trade-marks and trade labels.

"It is understood, that any person, who desires to obtain the aforesaid protection must fulfill the formalities required by the **LAWS** of the respective countries."

Article 5 of the treaty between these two countries, and which is referred to as the Hay-Pauncefort Treaty of 1899, as to the Convention and as to the tenure and disposition of real and personal property, is as follows:

"In all that concerns the right of disposing of every kind of property, real or personal, **CITIZENS** **OR** subjects of each of the High Contracting parties,

shall in the dominions of the other enjoy the rights which are, or may be accorded to the CITIZENS or subject of the most favored nation."

It is to be observed that in these latter treaties and conventions the CITIZENS of the respective countries have been distinguished from SUBJECTS—subjects who may be citizens as well in person as in law—and citizens who may be persons in law but not entitled to certain rights of natural persons and subjects.

The Department of State has certified that the Straits Settlements has acceded to the Convention of 1899, page 777, Senate Documents, Vol. 47; Treaty and Conventions, Vol. 1.

The Treaty or Convention of Commerce and Navigation between the United States of America and His Britannic Majesty of 1915, in its article first, states the following:

"There shall be between the territories of the United States of America, and all the territories of His Britannic Majesty in Europe, a reciprocal liberty of commerce. The inhabitants of the two countries, respectively, shall have liberty freely and securely to come with their ships and cargoes to all such places, ports and rivers, in the territories aforesaid, to which other foreigners are permitted to come, to enter into the same, and to remain in and reside in any parts of the said territories, respectively; also to hire and occupy houses and warehouses for the purpose of their commerce; and, generally, the merchants and traders of each nation, respectively, shall enjoy the most complete protection and security for their commerce, but subject always to the laws and statutes of the two countries, respectively."

This article, together with the "most-favored-nation" clause of the Hay-Pauncefote Treaty justifies counsel in asserting the right accorded CORPORATION, limited liability, and other companies and associations of Russia and Siam, for the benefit of Behn, Meyer & Company, Ltd., a Corporation and CITIZEN of Great Britain. The agreement with Russia of 1904 is as follows:

"The Government of the United States and the Imperial Russian Government having judged that it would be mutually useful to regulate the position of CORPORATIONS or stock companies and other commercial associations, industrial or financial, the undersigned by virtue of the authority which has been vested in them, have agreed as follows:

1. Corporations or stock companies and other industrial or financial commercial organizations, DOMICILED IN one of the two countries, and on the condition that they have been regularly organized in conformity to the laws in force in that country, shall be recognized as having a legal existence in the other country, and shall have therein especially the right to appear before the courts whether for the purpose of bringing an action or of defrauding themselves against one.

2. That in all cases the said Corporations and companies shall enjoy in the other country the same rights which are or may be granted to similar companies of other countries.

3. It is understood that the foregoing stipulation or agreement has no bearing upon the question whether a society or Corporation organized in one of the two countries will or will not be permitted to transact its business or industry in the other, this permission remaining always subject to the regulations in this respect existing in the latter country.

This agreement shall go into force on the 25/12 of June, 1904, and shall only be discontinued one year after its denunciation shall have been made by one of the parties to the agreement."

Articles 4 and 5 of the treaty with Siam, done at Washington on the 16th day of December, 1920, is as follows:

"The CITIZENS or subject of each of the High Contracting Parties shall have free access to the courts of Justice of the other in pursuit and defense of their rights; they shall be at liberty, equally with the native CITIZENS or subjects, and with the CITIZENS or subjects of the most favored nation, to choose and employ lawyers, advocates and representatives to pursue and defend their rights before such courts.

"There shall be no conditions or requirements imposed upon American citizens in connection with such access to the Courts of Justice in Siam, which do not apply to native citizens or subjects of the most favored nation.

"Limited-liability and other companies and Associations already or hereafter to be organized in accordance with the laws of either High Contracting Party and DOMICILED in the territories of SUCH PARTIES, are authorized, in the territories of the other, to exercise their rights, and appear in the Courts either as plaintiff or defendants, subject to the laws of such other party.

"There shall be no conditions or requirements imposed upon American CORPORATIONS, companies or associations, in connection with such access to the Courts of Justice in Siam, which do not apply to such native CORPORATION, companies or associations, or to corporations, companies or associations of the most favored nation."

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These citations from the treaties of the United States Government is the law—the fundamental law—taken together with the Declaration of Independence, the Articles of Confederation, and the Constitution.

Assistant Attorney General Warren, of the United States, who had the Trading with the Enemy Act in charge for the Government before its passage by Congress, stated (hearings before Subcommittee on H. R. 4960, 189):

“We have specifically abstained in the Bill from attempting to go behind the corporate charter. If the corporation is an American corporation, then it can do business in this country. * * * In England they attempted to go behind the charter of an English corporation and they attempted to hold that an English corporation which was controlled by German stockholders was an enemy within the purview of their act, and they landed in inextricable confusion. * * * Here we have solved that by saying that we will not go behind the corporate charter, no matter how many German stockholders there may be.”

The “Trading with the Enemy Act” within itself has established a clear and comprehensive policy for dealing with enemies, their allies, property, debts, and corporations, and was meticulous in defining some of the chief terms used therein.

For the purpose of our investigation the word “person” is defined as meaning any “corporation or body politic.” Section 2, paragraph c.

The word “enemy” or “ally of enemy” is defined to mean “any incorporation incorporated within such territory of any

nation with which the United States is at war or incorporated within any country other than the United States and DOING BUSINESS WITHIN SUCH TERRITORY."

It is not even claimed that Behn, Meyer & Co., Ltd., was incorporated within any territory of any nation with which the United States is at war.

This corporation was incorporated within a British colony and is, therefore, a corporation incorporated in a country at least friendly and neutral, if not allied, in the war. Behn, Meyer & Company, Ltd., was a corporation incorporated within a country other than the United States, but Behn, Meyer & Company, Ltd., was not "doing business within any such territory."

Behn, Meyer & Company, Ltd., has never been proclaimed by the President of the United States as "enemy."

These are the essential requisites to "enemy" status under the Trading with the Enemy Act. They are a condition precedent to even declaring the corporation an "enemy." Behn, Meyer & Co., Ltd., was then, and still is, to the present date, licensed as a British corporation to do business in the Philippine Islands by the Government of the United States, acting through its insular officials. This license has never been revoked or canceled.

When dealing with the matter of enacting legislation for the purpose of regulating the trading with the enemy, Congress of the United States had before it both the British statutes and the French statutes. Congress knew that it had been enacted by the British Parliament that a company with one-third of its stock enemy-owned should be subject to investigation by the Board of Trade (4 & 5 Geo. V, c. 87, sec. 2), and that if it appeared to the Board of Trade

that the control or management of the company had been so affected by the state of war as to make that course expedient, then the Board was authorized to have a controller appointed to take over the company's business and property (*id.*, sec. 3), or, if it saw fit, to have the company wound up (5 & 6 Geo. V, c. 105, sec. 1).

It had also previously been held in France, on the other hand, that a company incorporated there or in Brazil was not an enemy, no matter who were its stockholders. Rouen, 1st Chambre, Nov. 8, 1915, *Clunet*, *Jour. de droit int.*, 253, 1916; Rouen, 1st Chambre, Jan. 19, 1916, *Gaz. des trib.*, Mar 30, 1916.

It is submitted that if the national character of stock ownership of any corporation had appeared to Congress to be important in the case of any corporation, American, allied, or neutral, Congress would have plainly and unequivocally so provided, and not have limited the criteria of "enemy" character, as it indisputably did in section 2 of the act, solely and exclusively to (1) residents in enemy territory, (2) incorporated therein, and (3) the doing of business therein. Congress has steadily maintained its intention not to make the personnel of the stockholders any test of "enemy" status in respect to any corporation whatsoever. Any other construction is wholly inconsistent with the other provisions of the act and with its general plan.

The records of Congress show that on June 4, 1918, both Mr. A. Mitchell Palmer, then the Alien Property Custodian, and Mr. Lee C. Bradley, his general counsel, appeared before the Committee on Interstate and Foreign Commerce of the House of Representatives in support of certain proposed amendments to the Trading with the Enemy Act. These

were in a large part embodied in the bill then before that committee (H. R. 12338, 65th Congress, 2d Session).

The following is an excerpt from the hearings referred to (p. 56):

"The Chairman: Now what is the next (amendment of the act which you advocate), Mr. Bradley?

"Mr. Bradley: 'Sub-section (d), near the bottom of page 49 (which) is copied from the English act. It reads:

" '(d) The Alien Property Custodian shall have power to appoint a managing agent, or the District Court of the United States for the District within which the property hereinafter specified or the major portion thereof may be located, upon the application of the Alien Property Custodian shall have power to appoint a receiver, who shall under such restrictions and conditions as the Alien Property Custodian or the District Court, respectively, may from time to time prescribe, receive, hold, carry on, conduct, manage, liquidate, pledge, mortgage, or sell the property of any person, firm, corporation, or association owned or controlled, directly or indirectly, by, for, in behalf of, for the benefit of, or in the interest of any enemy or ally of enemy in any property, firm, corporation, or association.'

"That goes much further than any other provision of the Trading with the Enemy Act, in that it would authorize the seizure and the ultimate disposition of the entirety of a property which was controlled by the enemy, although he might not be the complete owner of it.

"Mr. De Walt: How does that compare with the provision that you had in the amendment to the deficiency bill (*i. e.*, the amendment of March 28, 1918)?

"Mr. Bradley: There was nothing at all in that about this. That just authorized the sale of what belonged to the enemy."

But the significant fact is that Congress refused to enact any such amendment.

At the next session of Congress (65th, 2d Session), Mr. Lee C. Bradley, counsel general of the Alien Property Custodian, appeared before the Committee on Interstate and Foreign Commerce of the House of Representatives in connection with a proposed amendment to the Trading with the Enemy Act (H. R. 12338) and stated that (Hearings, p. 24)—

"The American corporation is never an enemy. The status of the Alien Property Custodian in respect of the American corporation is that merely of a stockholder. What he does when he seizes the enemy stock is to demand representation on its board of directors."

On July 18, 1918, Hon. John W. Davis, as Acting Attorney General of the United States, rendered an opinion upon the subject to the Alien Property Custodian. The latter had inquired as to his right to act against an American corporation which was the owner of a patent and a majority of whose stockholders were German. If such a corporation was an "enemy," he could seize its property and its patent; otherwise he could take only the stock interest of the German stockholders, but not the patent, which belonged to the corporation itself. The Acting Attorney General ruled against this attempt to condemn such a corporation as an "enemy" and capture its corporate property. He held that:

"The meaning of the word 'enemy' as used in this Act is defined in section 2. That part of the definition which deals with corporations is as follows: 'Any cor-

poration incorporated within such territory of any nation with which the United States is at war, or incorporated within any country other than the United States and doing business within such territory.'

"I am of the opinion that this enumeration of enemy corporations was intended to be exhaustive and that under no circumstances can an American corporation be held to be an enemy within the meaning of this act."

The situation with regard to Behn, Meyer & Co., Ltd., a British corporation, guaranteed as it is by the solemn treaties of the United States of America, and any American or domestic corporation is precisely and exactly the same. Russia is today specifically refused recognition by the United States of America because her officials and authorities refuse to adhere to the terms of the treaty and convention cited herein. The President (President Coolidge) of the United States, in his message to Congress of the United States last December, stated with reference to the Russian situation and the ignoring of its treaty obligations and failure to return property seized of citizens of the United States:

"Our diplomatic relations, lately so largely interrupted, are now being resumed, but Russia presents notable difficulties. We have every desire to see that great people, who are our traditional friends, restored to their position among the nations of the earth. We have relieved their pitiable destitution with an enormous charity. Our Government offers no objection to the carrying on of commerce by our citizens with the people of Russia. Our Government does not propose, however, to enter into relations with another régime obligations. I do not propose to barter away for the privilege of trade any of the cherished rights

of humanity. I do not propose to make merchandise of any American principles. Those rights and principles must go wherever the sanction of our Government go.

"But while the favor of America is not for sale, I am willing to make large concessions for the purpose of returning to the ancient ways of society can be detected. But more are needed. Wherever there appears any disposition to compensate our citizens who were despoiled, and to recognize that debt contracted with our Government, not by the Czar, but by the newly formed Republic of Russia; whenever the active spirit of enmity to our institutions is abated; whenever there appear works mete for repentance, our country ought to be the first to go to the economic and moral rescue of Russia. We have every desire to help and no desire to injure. We hope the time is near at hand when we can act."

John Basset Moore, in his incomparable work on International Law, on pages 800 *et seq.*, vol. III, treats of foreign corporations, and especially between the United States and Great Britain:

"Corporations, under the treaties between the United States and Great Britain of 1783 and 1794, are entitled in respect of security for their property, to the same rights as natural persons." Moore's International Law Dig., pp. 800, Vol. III. Society for the propagation of the Gospel *vs.* New Haven, 8 Wheat., 464.

"There is indisputable legal presumption that a State corporation, when sued or suing in a Circuit Court of the United States, is composed of citizens of the State which created it, * * *. That doctrine began, as we have seen, in the assumption that State

corporations were composed of citizens of the State which created them; but such assumption was one of fact, and was subject of allegation and traverse, and thus the jurisdiction of the Federal courts might be defeated. Then, after a long contest in this Court, it was settled that the presumption was one of law, not to be defeated by allegation or evidence to the contrary. There we are content to leave it." *St. Louis & San Francisco Railway Co. vs. James* (1896), 106 U. S., 545-562-563.

"A British railway corporation, considering itself aggrieved by the action of the British Colonial authorities, addressed a memorial to the British government. The Government of the United States was requested, in behalf of an American corporation, to support the latter's memorial. The United States answered that the railway company, in whose name the memorial was presented, being a British corporation, could not call upon the United States to intervene in its behalf with the British authorities, but that there was 'a more substantial reason for the refusal than that of the distinction between a corporation and its shareholders. It is an established principle that where a State creates a corporation and confers upon it franchises and obligations of an important public character, such as the operation of a railroad, the company intrusted with these privileges and duties is not allowed, without the consent of the government from which it derives its existence, to transfer them to others. This general principle may be to some extent evaded in the case of an incorporated company by the transfer, not of the property itself, but the shares of stock in the corporation. But the mere transfer of shares between individuals does not effect the complete subjection of the corporation itself

to the government which created it. That government still retains all the powers of regulation and legislation in respect to the corporation, its rights, privileges and franchises, which it would have had, had there been no transfer of shares. Any attempt by the government of persons holding a portion or even the whole of the shares of a corporation, with the government which created it and within whose limits its operations are conducted, would be an infringement of the principle above referred to.' Mr. Uhl, Act. Sec'y of State, to Mr. Wesson, April 29, 1895, 241 M. S., Dom. Let. 696.

"Henry Chauncey, a citizen of the United States, and two other persons, also such citizens, made a claim against the Chilean government as surviving members of the firm of Allsop & Company. The claim was based on alleged interference by the Chilean government with certain property or property rights, which were transferred in 1875 to that firm, and which, the firm having gone into liquidation, were embraced in a contract of settlement in 1876 between the liquidating partner of the firm and the government of Bolivia. Subsequently on the death of the partner in question, Mr. Chauncey became the liquidator of the firm, and as such liquidator he appeared as the firm's representative in presenting the claim. It appeared that the firm was formed in 1870 under the laws of Chili, with its domicile at Valparaiso, and that it constituted under those laws a society or partnership en commandite, which constitutes under the law of Chile, which is based on the civil law, a juridical person or entity distinct from its individual members. On this ground it was held that the firm was to be considered for international purposes as a citizen of Chile, and was therefore incapable of prosecuting

through its representatives a claim against Chile as a citizen of the United States before an international commission." Moore's Int. Law Dig., Vol III, p. 802. See also: Henry Chauncey *vs.* Chile, No. 3, United States and Chilean Claims Commission (1901), citing Code of Chile, tit. 28, art. 2053; Calvo, Droit International II, 227, 399; Smith *vs.* McMicken, 3 La. Ann., 322; Liverpool Nov. Co. *vs.* Agar, 14 Fed. Rep., 615; Wharton's Int. Law Dig., II, 528; Field's Int. Code, art. 545; Miller *vs.* Dows, 94 U. S., 445, and other cases therein cited.

United States Courts.

"It is elementary that a foreign corporation is one that derives its existence solely from another state, corporation or country. This term, "a foreign corporation," is used indiscriminately to designate either corporations created under the laws of another State of the American Union or a corporation created by or under the laws of a foreign country."

"It must dwell in the place of its creation and it cannot migrate to another sovereignty." Sec. 3927, 14 A, *Corpus Juris*.

"A corporation can exercise none of its functions and privileges conferred by its charter in another state or country except by the comity and consent of such state or country. The rights and immunities of stockholders of foreign corporations are within the rule of comity and must be respected. They cannot be held individually liable, for instance, for the debts or torts of the corporation unless they are made so by its charter or by some statute." Sec. 3931, *Corpus Juris*, 14 A.

"One result of the doctrine that it cannot migrate but must dwell in the place of its creation is that a

corporation, in so far as it can be regarded as a 'citizen,' 'resident,' or 'inhabitant,' as it may be for the purpose of jurisdiction and for many other purposes, is a 'citizen,' 'resident' or 'inhabitant' of the state or country by or under the laws of which it was created and of that state or country only. Sec. 3933, 14 A. *Corpus Juris*; 240 U. S., 642.

"Every power that a corporation exercises in another state depends on its validity upon the laws of such state, and a corporation can make no valid contract without their sanction express or implied." Sec. 3945, 14 A, *Corpus Juris*.

"A corporation cannot exercise any powers in other states unless its charter or the governing law of its existence authorizes it so to do, and in the absence of such authority the corporate acts and contracts done or made beyond the limits of the state are void. The charter and governing laws of the state in which the corporation is created determine the rights and liabilities of the stockholders." *Hudson River Pulp, etc., Co. vs. Warner*, 99 Fed., 187.

"Hence to determine the capacity or disability of the corporation in a given case regard must primarily be had to the laws of the state or sovereignty from which it has derived its franchise." 25 L. R. A., 358.

"By doing business away from their legal residence they (corporations) do not change their citizenship but simply extend the field of their operations, they reside at home but do business abroad." *Balt., etc., R. R. Co. vs. Koontz*, 104 U. S., 511.

"The establishment of a branch in a place other than the domicile does not affect the domicile which remains as fixed as the statutes under which the corporation was created." *Philippine Sugar Estates Development Co. vs. United States*, 39 Ct. Cl., 225,

"The stock of a corporation is not within the state

because its agent has property there and is doing business within this state." *Plimpton vs. Bigelow*, 93 N. Y., 592.

"The corporation created by or under the laws of a foreign country is an alien in any other country although most all of its stockholders may be citizens or subjects of the latter country." *Jansen vs. Diefontein Consolidated Mines*, 1902, A. C., 484; 5 B. R. C., 610.

"The validity of the incorporation of foreign corporations is a question of law, depending on the law of the state of its domicile. A certificate that a corporation is entitled to commence business issued under the English company's consolidation act is conclusive of such right as to all matters both of fact and law." *Lindenburger Cold Storage, etc., vs. J. Lindenburger, Inc.*, 235 Fed.

In this connection it is pointed out that Behn, Meyer & Company, Ltd., was organized under the Company's Ordinance, of Singapore, Straits Settlements, of 1889, which is analogous to the English Company's Consolidation Act of 1908, and that the proper authority or official of the British Government in Singapore has issued his certificate to that effect. It is therefore conclusive according to the Federal courts of the United States of America.

The opinion of the Attorney General of the United States, Wickersham, rendered July 11, 1911, held that in the Act of Congress of 1825 Congress declared a corporation of the United States a "citizen" thereof within the meaning of the navigation laws. "Therefore," says the opinion, "a vessel belonging to a domestic corporation is owned by a citizen of the United States, even though some of the stock in that corporation belongs to aliens; alien stockholders have

neither the legal nor equitable ownership of any part of the vessel. As said by the Supreme Court of the United States in *Humphreys vs. McKissock* (140 U. S., 304, 312):

"Both the commissioner and the court * * * seem to have confounded the ownership of stock in a corporation with the ownership of its property. But nothing is more distinct than that the two rights; the ownership of one confers no ownership of the other. * * * The corporation—the artificial being created—holds the property, and alone can mortgage or transfer it."

Except through the payment of dividends out of surplus profits, the property of a Philippine Islands corporation can pass **LAWFULLY** to its stockholders only through a distribution of its assets made under **JUDICIAL** proceedings **AFTER ALL DEBTS** of the corporation have been paid and satisfied in full.

Behn, Meyer & Company, Ltd., was admitted into and licensed to do business within the Philippine Islands under the laws of the Philippine Islands. The corporation met the requirements of the law for choses in action, as these supply the property, if any is necessary under Philippine law, to support the receivership. A chose in action is personal property. (32 Cyc., 669.)

Finally, the statute under which this receiver was appointed requires the appointment of receiver where certain conditions exist, which the court here found as a fact did exist. The existence of property within the jurisdiction is not necessary, provided, there is anything the receiver can do in the premises. This condition is here met by the claims against Menzi, Bordman and the Alien Property Custodian, which the receiver is now pursuing. The whole of

the properties of this company having been looted and stolen by Menzi with the aid of Bordman and the Bank of the Philippine Islands, the receiver is now at Manila proceeding in equity against them, charging them with the fraud they have committed and seeking to recover from them, not merely the pittance which is involved in this present case, but the entire estate of the company. (See page 86 of motion to intervene.) At the same time he has filed, within the allotted time, a claim with the Alien Property Custodian, not for \$10,000.00, as alleged in the answer of the plaintiff, but for every dollar which once belonged to Behn, Meyer & Co., a part of which, under one subterfuge or another, was paid over to the Alien Property Custodian, and the remainder of which was stolen by Menzi and his co-conspirators, as set out above.

And this honorable court is here reminded that if a receiver had not been appointed, no one would ever have attempted to recover the properties of Behn, Meyer & Company for those rightfully entitled to them. Menzi, who was its trusted manager, would not do so, for he is even now enjoying the proceeds of his dishonesty and theft. Harrison, Pemberton, Moffat, and Pope who in one official capacity or another, were charged with the protection of this company's assets, all of them, directly or indirectly, deliberately or through inadvertence, contributed to the dissipation of those assets. The herein plaintiffs, although they represent themselves to be the company, have made no attempt to recover the vast properties the company lost in the Philippine Islands, but have contented themselves by bringing this suit for a few hundred thousand dollars, which, if the plaintiffs succeed herein, will never go to the home office of the

company at Singapore or to the judgment creditors in Manila, but will be carried away to Germany, where not one dollar of it will ever be applied for the benefit of Behn, Meyer or its creditors. It was not to preserve the estate of Behn, Meyer that this suit was brought under an alleged power of attorney, the circumstances of whose execution were never disclosed to the court until this intervention by the receiver, appointed by the court in Manila, was brought, who alone has done all that has been done to recover the squandered properties and assets of this company and who alone has informed this court of the controlling facts in this case.

Therefore we submit that Lazarus G. Joseph was properly appointed receiver of Behn, Meyer & Company, Ltd.

(2) *The Removal of Lazarus G. Joseph Was Improper.*

The removal of Lazarus G. Joseph was the result of a motion to intervene in the receivership proceedings in the Philippine Islands in the case of Behn, Meyer & Company *vs.* Stanley *et al.* by Menzi, Bordman, and the Bank of the Philippine Islands. It is submitted that it is patent upon the face of the proceedings that the removal was improper and cannot be sustained.

After Lazarus G. Joseph had been appointed receiver by Judge Harvey, on August 10, 1922, he commenced to try and collect the assets of the company. He first filed a suit against the Hamburg-Amerika line to revive a judgment recovered by Behn, Meyer against the line in October, 1917. This case came on to be heard before Judge S. del Rosario in the Court of First Instance, Manila, Messrs. Crossfield & O'Brien, attorneys for the line, attacking the jurisdiction

of the court and demurring to the complaint. Their contentions were overruled; they appealed to the Supreme Court of the Philippine Islands, and judgment of that court reversing the lower court, as set up on page 14 of the plaintiff's answer to this motion. The effect of that decision on the instant case will hereafter be referred to; and at this point suffice it to say that in May, 1923, four months before the action of Judge Diaz in removing the receiver appointed by Judge Harvey, another judge of the Court of First Instance, Judge del Rosario, had refused to interfere with that appointment.

In this case of *Joseph vs. Hamburg-Amerika line*, Joseph asked the court to order Menzi to produce the books of Behn, Meyer. The court refused to issue the order, though not on the ground that Joseph was not receiver for Behn, Meyer, as the court held he was.

The receiver then requested Menzi to deliver the books of Behn, Meyer to him by letter, as follows:

MANILA, P. I., August 1st, 1923.

MR. J. M. MENZI,
Manila, P. I.

SIR: As the receiver of Behn, Meyer & Co., Ltd., and inasmuch as you have testified in Court that the books of accounts of the said firm are in your possession, will you kindly turn the same over to me.

As receiver of Behn, Meyer & Co., Ltd., I am the legal depositary of the said books and request that you indicate the time when I may go to your office to receive the said books.

Very respectfully,
(Sgd.) LAZARUS G. JOSEPH,
Receiver for Behn, Meyer & Co., Ltd.

This Menzi refused to do by letter, as follows:

MANILA, P. I., *August 3, 1923.*

MR. LAZARUS G. JOSEPH,
Manila, P. I.

DEAR SIR: I beg to acknowledge receipt of your letter of August 1, 1923, requesting me to turn over to you the books of accounts which formerly pertained to Behn, Meyer & Co., Ltd.—I regret to inform you that I cannot comply with your request as these books pertain to the business which was formerly purchased (by John Bordman from the Alien Property Custodian of the United States), and were relivered by the Alien Property Custodian to him, as evidence of the outstanding accounts of the business of Behn, Meyer & Co., Ltd., which were purchased by the said John Bordman. These outstanding accounts are being liquidated, and it is unnecessary for me to say that these books are necessary as evidence and in liquidation of these accounts. Furthermore, I cannot recognize your right to have possession of these books; first, for the reasons which I have above stated, and secondly, that I do not consider you, under the law, as the legally appointed receiver for the business of Behn, Meyer & Co., Ltd., as that business was liquidated by the Alien Property Custodian of the United States, and finally sold. You will recall that in the case which you brought against the Hamburg-Amerika line, your counsel requested the court to turn over these books to you, which request was denied by the court.

Yours respectfully,
(Sgd.) J. M. MENZI.

Thereupon, on August 31st, the receiver filed his suit against Menzi, Bordman, and the Bank of the Philippine Islands,

above referred to, in which he sets up the fraud perpetrated by them and prays for the recovery of the property. (See page 37 of motion.)

Four days later, on September 5, the receiver applied to the court, at this time presided over by Judge Diaz, for a rule to show cause, directed to Menzi, why he should not produce the books of Behn, Meyer. On September 13 Menzi replied to the rule stating:

(1) That February 16, 1918, all the assets of Behn, Meyer were seized by the Alien Property Custodian and were thereafter sold to John Bordman for 660,000 ₪.

(2) That 392,674.96 ₪, proceeds of this liquidation, were turned over to the Alien Property Custodian.

(3) That Joseph is not the legally appointed receiver for Behn, Meyer.

(4) That Joseph has sued Menzi to recover the assets of Behn, Meyer. (See page 49 of motion.)

The next day, September 14th, 1923, Menzi, Bordman, and the Bank of the Philippine Islands filed a motion to intervene in the case of Behn, Meyer *vs.* Stanley, being the case in which Joseph was appointed receiver for the sole ground of moving to vacate the order of August 10, 1922, in which he was appointed. (See page 57 of motion.) The motion to vacate the order sets up the following matters:

(1) That the Alien Property Custodian took over the assets of Behn, Meyer February 16, 1918, and sold them to Bordman in January, 1919.

(2) That Behn, Meyer originally brought the suit; that Jureidini intervened, recovered judgment,

and, with knowledge of the alleged liquidation of Behn, Meyer, had Joseph appointed receiver.

(3) That by law Jureidini's only remedy was to apply to the Custodian or the Treasurer of the United States for payment out of the moneys held by them.

(4) That therefore Judge Harvey had no jurisdiction to appoint Joseph receiver. (See pages 58-66 of motion.)

Joseph, on September 17, 1923, filed an opposition to the above motion in which he sets up the following matters:

(1) That the interveners have no interest in the subject-matter of the suit, but are strangers to the proceeding.

(2) That they cannot intervene to attack the jurisdiction.

(3) That the receiver was properly appointed under the statutes of Philippine Islands. (See pages 71-75 of motion.)

On September 26, 1923, Judge Diaz granted the motion to intervene, and also vacated the receivership for the following reasons:

(1) The property of Behn, Meyer had been seized by the Alien Property Custodian and sold to Bordman.

(2) Therefore Judge Harvey had no jurisdiction to appoint a receiver for Behn, Meyer.

It is submitted that such proceedings as the above disclose upon their face the invalidity of the removal of Joseph as receiver, and Judge Diaz's decision cannot be supported either as to the facts it attempts to find or as to the law it seeks to apply.

In regard to intervention, the Philippine Code provides as follows:

"INTERVENTION.—A person may, at any period of a trial, upon motion, be permitted by the Court to intervene in an action or proceeding, if he has a legal interest in the matter in litigation, or in the success of either of the parties, or an interest against both. Such intervening party may be permitted to join the plaintiff in claiming what is sought by the claimant, or to unite with the defendant in resisting the claims of the plaintiff, or to demand anything adverse to both the plaintiff and defendant. Such intervention, if permitted by the Court, shall be made by complaint in regular form, filed in court, and may be answered or demurred to as if it were an original complaint. Notice of motion for such intervention shall be given to all parties to the action, and notice may be given by publication, in accordance with the provisions of this title relating to publication, in cases where other notice is impractical."

It will thus be noted at the outset that neither of the parties were notified as provided by the Code of Civil Procedure, nor was the provisions of the code followed in filing their complaint in regular form. None of the interveners nor their attorneys appeared as friend of the Court. None of the due process of law as provided in the above quoted section of the Code of Civil Procedure was followed by the lower Court.

The lower Court denied to the Receiver and to A. N. Joureidini & Bros. any of the equal protection of the law in denying them the time or the right to file a demurrer to the pleading of the interveners. The motion to intervene was filed on September 14, 1923, and was heard by the court

on September 15, 1923, and without rendering any decision on the motion to intervene, separately, the lower court, without advising the parties to the case, and giving them the protection "in regular form" to answer or demur to the pleading of the interveners, proceeded to render its decision on September 23, 1923, denying its jurisdiction; allowing the interveners to intervene; not requiring them, or any of them, to file in court, by complaint in regular form, such intervention, but in entire disregard to the statute made a finding of facts against the receiver and the parties to the case, and denied the motion of the receiver, and dismissed the receivership proceedings.

Such is not due process of the law nor the equal protection of the law, which the parties to the case have a right to expect and which the law gives them the right to demand. Had the Court decided that the interveners had the right to intervene it should have so decided and then ordered that the interveners file their complaint in the Court in regular form, as if it were an original complaint, and the parties would have had an opportunity, in accordance with this particular law, as well as with the general rules of practice and procedure, to either demur to the complaint of the interveners or to answer, or to file such other proper pleading as called for. But nothing of this nature was allowed by the lower Court. All the constitutional guarantees of the parties to this suit were completely ignored, the rules of the Courts of the Philippine Islands were disregarded, and the provisions of the Code of Civil Procedure in force in the Philippine Islands were set at naught by the lower Court when it decided the question to intervene on September 23, 1923, and December 3, 1923.

The court was entirely without jurisdiction to decide the questions presented to the motion to vacate the order of the lower court of August 10, 1922, appointing the receiver. The only questions which the court at that time was authorized to decide was the motion of the receiver to have J. M. Menzi deliver possession of the books of account of the firm of Behn, Meyer & Company, Ltd., to the receiver appointed by the court for the assets, property and estate of that firm, and not the question of the motion requesting permission to intervene.

A consideration of the motion to set aside the receivership, and the motion requesting permission to intervene, shows conclusively that the sole and only interest which the interveners had in the case was to have the receivership proceedings terminated, and to leave the judgment creditor in exactly the same position as he was in January 23, 1917, when the case was originally filed, and without any remedy at law or equity whatsoever. The motion to set aside the order appointing a receiver for the property, assets, and estate of Behn, Meyer & Company, Ltd., recites the fact that the receiver had at that time filed a complaint in the Court of First Instance of Manila against the three interveners, John Bordman, J. M. Menzi, and the Bank of the Philippine Islands, charging them with having transferred property of Behn, Meyer & Company, Ltd., to themselves illegally and fraudulently.

"One to whom property is transferred in violation of law cannot attack receiver's status, nor that of the judgment by which he was appointed, by showing that the court wherein judgment creditor had obtained judgment as a preliminary to the action for a receivership did not have jurisdiction to render judgment." *Collins vs. Burr*, 204 N. Y. S., 357.

Intervention is the application of a person not a party to the suit to litigate some claim of title or interest, by way of lien or otherwise, in the property which is the subject-matter of the suit, or which has been drawn into the possession of the court during the progress of the cause. 223 U. S., 330; 266 Fed., 832.

Intervention is not independent, but ancillary to the suit. 156 U. S., 47; 15 Sup. Ct. Rep., 266; 275 Fed., 1017.

Menzi, Bordman, and the Bank of the Philippine Islands are entire strangers, and their sole and exclusive object is to destroy a judgment of the courts of the Philippine Islands, and their sole alleged and avowed object is to attack the jurisdiction of the court.

The general rule is that a stranger cannot make himself a defendant in a suit in equity, and courts of equity have adhered to this rule as a basis in determining whether the application to intervene should be granted. 74 Fed., 326; 144 U. S., 519; 4 Fed., 488.

In 67 Fed., 170, the court says: "That a stranger to a suit will not be permitted on his own application to be made a party defendant in an equity suit over the objections of plaintiff is a well-established general rule to which there are few exceptions." (And the reasons are fairly stated in *Greagory vs. Pike*, 15 C. C. A., 33; 67 Fed., 845; *Chester vs. Life Asso. of America*, 4 Fed., 491.)

The rule thirty-seven (37) of Rules of Practice for the Courts of Equity of the United States, in its last paragraph lays down the law in the Courts of the United States and is as follows:

"Any one claiming an interest in the litigation may at any time be permitted to assert his right by

intervention, but the intervention shall be in such ordination to, and in recognition of, the propriety of the main proceedings."

While this rule permits any one having an interest or claiming an interest at any time, yet it is required to be in subordination to the main proceedings. *King vs. Barr*, 262 Fed., 56; *Jennings vs. Smith*, 242 Fed., 564; *Cauffield vs. Laurence*, 256 Fed., 714.

The mere fact that a party ASSERTS some interest in the controversy or in the property does not bind the Court to permit the intervention, even though the property is in the hands of a receiver. *Minot vs. Martin*, 37 C. C. A., 234; 95 Fed., 739.

A petition must be filed asking for permission to intervene where there is a right to intervene. *Blaffer vs. New Orleans Water Supply Co.*, 87 C. C. A., 341; 160 Fed., 392; *Perry vs. Godbe*, 82 Fed., 143; *Born vs. Schneider*, 128 Fed., 179.

In order that there may be no misunderstanding in regard as to what law governs and what decisions bind the courts of first instance in the Philippine Islands, and the Supreme Court of the Philippine Islands, the following authorities are submitted:

"The State Supreme Court must bow to the authority of the United States Supreme Court in deciding Federal questions." *Howard vs. Davis*, 95 Southern, 354.

"The State Supreme Court is bound by the decisions of the Supreme Court of the United States on the question of whether a case was made for removal of a cause from a State to a Federal Court." *Missouri Pac. R. Co. vs. Tompkins*, 247 S. W., 54.

In giving his instructions to the Commission, President McKinley stated in said instructions:

"At the same time the Commission should bear in mind, and the people of the Islands should be made plainly to understand that there are certain great principles of government which have been made the basis of our governmental system, which we deem essential to the rule of law and the maintenance of individual freedom, and of which they have, unfortunately, been denied the experience possessed by us; that there are also certain practical rules of government which we have found to be essential to the preservation of these great principles of liberty and law, and that these principles and these rules of government must be established and maintained in their Islands for the sake of their liberty and happiness, however much they may conflict with the customs or laws of procedure with which they are familiar."

The petition to intervene should be accompanied with the pleading sought to be filed in the event the intervention is granted, and both the petition to intervene and the pleading to be filed after intervention is permitted must show:

First. That there will be no delay to the parties in the prosecution of the main suit;

Second. That the pleading is reasonably sufficient to effect the purpose intended and has been drawn up as provided by the statute;

Third. That it is a proper case for intervention.

Toler vs. East Tennessee, V. & G. R. Co., 67 Fed., 174-5.

Any of the parties to the suit may contest the application, and they have the right to have all the grounds upon which the application is based to be specifically set forth. *Powell vs. Liecester Mills*, 92 Fed., 115-16.

The court has no jurisdiction to allow intervention for the purpose of attacking the jurisdiction of the court. The petition requesting permission to intervene, as well as the motion made after intervention in that case, were both made for the exclusive purpose of attacking the jurisdiction of the court.

Once jurisdiction has attached the parties seeking to intervene will be excluded from questioning the jurisdiction of the court. According to the rule of the courts of equity of the United States, as well as the statute in force in the Philippine Islands, intervention is allowed only to those who have a real interest in the controversy then before the court, and their intervention must be in recognition of and in subordination of the main case. In other words, they must accept the jurisdiction of the court before they can be heard. It is an absurdity to request the court to take jurisdiction to be heard on a question that it has no jurisdiction.

The parties seeking to intervene must have a legal interest which will be affected by the decree of the court. And the decree referred to in this case is the decree rendering judgment to A. N. Jouredini & Brothers and against Behn, Meyer & Company, Ltd. 256 Fed., 238; 242 Fed., 564; 275 Fed., 1017.

Nor can intervention affect jurisdiction once obtained. 116 Fed., 534. The interveners cannot even attack the jurisdiction although asserted by cross-bill against other defendants from same state. 117 Fed., 89; Morton Trust Co. *vs.* N. Y. & O. R. Co., 105 Fed., 539; Rice *vs.* Durham Water Co., 91 Fed., 434; Sioux City Ter. R. & W. Co. *vs.* Trust Co., 82 Fed., 128; 27 C. C. A., 73.

"Interveners must take the case as they find it. If their interests suffer it is their own act, nor can they object to the jurisdiction of the court." *Kumer's Syndic vs. Holliday*, 19 La. Ann., 154; *Smith vs. Gale*, 144 U. S., 509; 12 Sup. Ct., 674.

"Persons voluntarily appearing in an action to file a petition of intervention are estopped to say that the court did not have jurisdiction of them." *Jack vs. Des Moines & Ft. D. R. Co.*, 49 Iowa, 627.

The jurisdiction of the court in that case had already attached many years previously and had been decided both by the Court of First Instance and the Supreme Court of the Philippine Islands. Not only had the case been before the courts for years, but the very judge who tried the main case in January, 1922, and who had issued the execution in April, was the very judge who made the appointment of the receiver.

"A decision on a demurrer is the law of the case until a different rule is laid down by the Supreme Court, although such decision was rendered by another judge than the one trying the case finally." 156 U. S., 680.

The petition asking permission to intervene is signed by Crossfield & O'Brien, as attorneys for J. M. Menzi and John Bordman. The record of the case, the very decision rendered by Judge Harvey in January, 1922, shows that the attorneys Crossfield & O'Brien, the then attorneys for the firm of Behn, Meyer & Company, Ltd., and that J. M. Menzi, the manager-director of the said Corporation, were the very person and attorneys who had originally filed the case in the Court of First Instance, the very firm and persons who

had won the case and had fought the appeal by the judgment creditor, A. N. Joureidini & Bros., before the Supreme Court in 1919, and the very persons who had fought the claim of Joureidini & Bros. in the Court of First Instance in 1922.

Yet despite these facts, which the record speaks on its face, and which was called to the attention of the lower court, the temporary and auxiliary judge of the lower court waves aside this palpable reversal of form and allows them to intervene. This in the face of the decisions of the Courts of the United States and the Philippine Islands to the contrary.

"It may be laid down as a general proposition that where a party assumes a certain position in a legal proceeding, and succeeds in maintaining that position, he may not thereafter, simply because his interests have changed, assume a contrary position, especially if it be to the prejudice of the party who has acquiesced in the position formerly taken by him." *Davis vs. Wakelee Sup. Ct. Repr. Vol. 15, p. 556.*

"It is contrary to the first principles of justice that a man should obtain an advantage over his adversary by asserting and relying upon the validity of a judgment against himself, and in a subsequent proceeding upon such judgment claim that it was without personal service upon him." *Davis vs. Wakelee, 15 Sup. Ct. Rep., 556.*

The petition to intervene recites that the reason for attacking the jurisdiction of the Court by the interveners was the alleged fact that the Alien Property Custodian had sold the business of the plaintiff in 1919, and that the Alien Property Custodian had seized the business in 1918. Yet

in 1922, six months before the receiver was appointed, we find Menzi and Crossfield & O'Brien in the Court of First Instance of Manila, in this very case of Behn, Meyer *vs.* Stanley et al., then representing Behn, Meyer & Co., Ltd., insisting on the jurisdiction of the court, and insisting that the money claimed by the judgment creditor A. N. Jouredini & Bros. was not owing to them. If the petition stated facts and the law correctly then the interveners were guilty of deceiving the court in January, 1922, six months before the appointment of the receiver. They were silent because they knew, as did their attorneys, that the statements made in the motion to set aside the order of August 10, 1922, appointing the Receiver, are utterly without foundation in fact, and that the said motion was made for the sole purpose of deceiving the court and keeping out of the hands of the Receiver the books of the firm of Behn, Meyer & Company, Ltd., which books will show the particular acts of the three interveners in the fraud practiced on the plaintiff corporation and on the government of the United States. They were afraid of the entries in the books. They were all three facing criminal prosecution and they and their lawyers knew it. They were willing to do anything to stop the threatened exposure.

The record further discloses that on July 24, 1918, in another case in the same court, presided over by the Hon. Judge Geo. R. Harvey, the intervener, Menzi, through his attorney, A. S. Crossfield, received from the Court of First Instance a certificate of deposit belonging to and the property of Behn, Meyer & Company, Ltd., for the face value of two hundred thousand pesos (\$100,000.00) and signed as the "Attorney for the Alien Property Custodian."

The record further discloses that after the receiver had been appointed the aforesaid Crossfield & O'Brien voluntarily came into the Court of First Instance, then presided over by the said Hon. Geo. R. Harvey, and submitting to the jurisdiction of the court, filed a claim against the receiver of Behn, Meyer & Company, Ltd., for thousands of dollars, certified by the said Crossfield under oath to be due to him from the firm of Behn, Meyer & Company, Ltd., and that the said Court of First Instance heard and allowed the said claim of the said Crossfield & O'Brien and ordered the receiver to pay the same when funds were available.

It is in particular to be noted that counsel for the plaintiffs in this case rely particularly upon the fact that the same court which appointed Joseph receiver removed him for the reason that at the time of appointing him it was not fully advised of the facts in the case. It should be remarked in this regard that the same court which appointed him did not remove him. He was appointed by Regular Judge Harvey. He was removed by Substitute Judge Diaz. It is true that Diaz, in his opinion removing him, states that certain facts concerning the seizure and sale of Behn, Meyer were not called to the attention of the court, but this statement is so far from the truth as to be little short of ridiculous. Judge Harvey had twice tried the case; he had before him Menzi's statement to the sheriff on the return of execution that all the property of Behn, Meyer had been seized by the Alien Property Custodian; he knew there was no tangible property within the jurisdiction. Nothing was presented to Judge Diaz which Judge Harvey had not previously considered.

Judge Diaz's opinion proceeds solely upon the ground that

there was no property of Behn, Meyer & Company which the receiver could administer. This, as above shown, is not the fact. But were it the fact, the proceeding of Judge Diaz in removing this receiver remains irregular and illegal for the reasons set out above.

(3) *The Receiver Has Stayed the Force and Effect of the Order of Judge Diaz, and Therefore is Still Receiver.*

Finally it is to be noted that in this case Joseph appealed from the order removing him as receiver, a bill of exceptions being perfected, and the case is now before the Supreme Court of the Philippine Islands. Counsel for the plaintiffs in this case at page 16 attack the contention of the intervener that the perfecting of the appeal operates as a supersedeas and continues the receiver in office.

Counsel for the plaintiff supports his position by citing *Watson vs. Enricas*, 1 P. R., 480, in which he says: "A similar contention was overruled." This statement is an error for the reason that *Watson vs. Enricas* did not concern a receivership at all, but a preliminary injunction. As set forth in the answer, that case was argued on the supposition that Section 144 of the Philippine Code, which provides that the filing of a bill of exceptions would stay execution, would be sufficient authority for the contention to the filing of a bill of exceptions would stay the dissolution of a preliminary injunction. The Philippine Code does not provide whether or not an appeal from the vacating of a receivership operates as a supersedeas; but it is submitted that the case of a receivership is far more analogous to the situation arising after judgment and before execution than such later situa-

tion is with the dissolution of a preliminary injunction. A preliminary injunction is an extraordinary remedy resting upon irreparable damage. When a preliminary injunction is granted, an entirely different situation results from that which arises when a receiver is appointed. The status quo is preserved by the granting of a preliminary injunction. The status quo is not preserved, but in fact, is altered by the appointment of a receiver. This deals with the basic consideration governing this question, that is to say, the maintaining of a status quo. The reason for a supersedeas in any event is that the status quo be preserved. After the appointment of a receiver, that official takes action in various ways. There is a certain status which obtained at the moment his receivership is vacated. It is that status which is to be preserved and not a status which obtained at the commencement of the litigation, which later status is the status sought to be preserved by a preliminary injunction. Compare this with an execution. After the rendition of judgment a certain status arises, namely, one party is liable for a sum of money which he has in his possession. The granting of supersedeas is to leave this money in his possession and to maintain the status which existed at the time of the rendition of the judgment.

"A supersedeas or stay on appeal from an order appointing or discharging a receiver does not prevent the court from taking such proceedings and making such incidental orders as may be necessary for the preservation of the property or assets and the protection of the rights of the parties pending the appeal."

This not only recognizes that supersedeas can be had on an appeal from an order dismissing a receiver, but it also indi-

cates the basic reason why such supersedeas should operate to maintain the receiver in office. The rights of the parties clearly require that the receiver continue in existence long enough to dispose of the matters which may have come into his hands as receiver or chose in action are fully enforced. In this connection it is to be noticed that neither the dismissal of a bill and the taking of a supersedeas together can relieve a receiver from the duty to act. (See *Hitz vs. Jenks*, 16 D. C. Appeals, 530.)

It is submitted that the rule is clearly laid down in 3 C. J., 1326, where it says:

“But, as a rule, the supersedeas does not vacate the receiver or discharge the receiver.”

This supersedeas, of course, is a supersedeas effective on appeal from an order appointing a receiver. But the converse of that proposition should be equally true. The receiver should continue in existence whether that existence is attacked by order of the court or supersedeas by the parties until such time as the Court of Appeals shall have determined the question and the matter is finally determined.

Counsel for the plaintiff, in Sections 19 and 20, pages 13 and 14 of the answer, sets up the fact that in a suit brought by Joseph, as receiver, against the Hamburg American line, the Supreme Court of the Philippine Islands has decided that he is not the receiver of Behn, Meyer & Company. The facts attending the prosecution and decision of this suit are not before this court. Concerning the decision in this case, there is nothing but a telegram from the clerk of the Supreme Court of the Philippine Islands. For all that appears, the question as to whether Joseph was receiver of Behn, Meyer & Company, was a purely collateral matter in this action. This

case was commenced early in 1923, and there was no reason why the pleadings in the case against the Hamburg American line should set up the illegal transfer of the properties of Behn, Meyer & Company. There is nothing to show that such facts were ever before the Court of First Instance or the Court of Appeals in the case of Behn, Meyer & Company *vs.* Hamburg American. Indeed, the probabilities are the other way. As early as May, 1923, the attorneys for defendant, the Hamburg American line, demurred to the complaint filed by Joseph, as receiver, and the demurrer was held against them and on it they appealed. Furthermore, the telegram of the clerk of the Supreme Court of the Philippine Islands says that that court held that Joseph was not the receiver for the reason that the properties of Behn, Meyer had been sold to Bordman. If this is the reason given by the Court of Appeals, it is obvious that the court could not have decided that question upon its merits, for the reason that there was nothing in the case of Behn, Meyer & Company *vs.* The Hamburg American to bring before the court the question of the transactions between Menzi, Bordman, and the Bank of the Philippine Islands. The court never looked into those transactions, but, for all that appears, accepted an allegation that the properties were sold and based its decision upon that. The appeal on the direct question of the receivership is now before the Supreme Court of the Philippine Islands and has not been yet determined. This the answer of counsel for the plaintiffs itself recognizes on page 15.

(b) THE RECEIVER IS NOT GUILTY OF LACHES.

Counsel for the plaintiff in this case, on pages 26 *et seq.*, alleges that the receiver has been guilty of laches. In this

regard, and in particular answering the allegations in paragraph 41 on page 26 of the said answer, it is to be noted that while it is true that Lazarus G. Joseph was appointed receiver on August 10, 1922, it was not until a year later that he had accumulated sufficient facts to warrant a filing of a suit against Menzi, Bordman, and the Bank of the Philippine Islands alleging their fraud and theft in connection with the properties of Behn, Meyer. After a year, in which he finally endeavors to obtain some information as to the whereabouts of the properties of the company for which he was receiver, he makes application to Menzi for the books of the company. This is refused him. He then files a suit against Menzi on August 31, 1923. It was then, and not until then, that his receivership was attacked. It was not until he began to bring home to Menzi and Bordman and the Bank of the Philippine Islands their illegal disposal of the company's proceeds that these persons began their attempt to silence him by removing him as receiver. The simultaneousness of these two actions—that is to say, the demand for the books by Joseph and the attack upon Joseph, receiver, by the custodian of the books—is in itself highly significant. It was during this year that the suit of Behn, Meyer & Company *vs.* Miller *et al.* was commenced. That suit was decided and appealed before August 1, 1923, when the receiver made his demand upon Menzi for the books and was finally brought face to face with the fraud and deceit which he had to cite. He had no knowledge during that year of events which were transpiring six thousand miles from him in Washington. The attempt, on page 27 of the answer, to raise the implication that Mr. Henry D. Green, who had formerly been the attorney for Behn, Meyer & Company and who at that time

was in the office of the Alien Property Custodian in Washington, communicated his knowledge, if he had any, of the suit brought in Washington to the receiver in the Philippine Islands, is both unfounded and unwarranted, and further displays the fundamental weakness of the position attempted here to be taken by counsel for the plaintiffs. In his capacity as an official of the Alien Property Custodian, Mr. Green could not act for or on behalf of Behn, Meyer & Company or its receiver. And it is submitted that if counsel for the plaintiff means that the receiver was in fact informed by Mr. Green of this suit, it is submitted that he should say so definitely and not seek the subterfuge of suggestion.

It is submitted that the matters set forth in paragraphs 42, 43, 44, on pages 27 and 28 of said motion are irrelevant, immaterial, and impertinent, and are furthermore an unwarranted attempt to cast reflection upon certain attorneys whose names are not mentioned by allegations of matters which in no way affect the question as to whether or not this receiver is guilty of laches. Supposing it were true that "for the purpose of securing funds to pay themselves" some of the attorneys for the receiver filed a claim with the Alien Property Custodian under paragraph 10 of subsection B of section 9 of the Trading with the Enemy Act. Does that in any way indicate that the receiver had any knowledge of the suit of Behn, Meyer *vs.* Miller *et al*? It is submitted that in this connection counsel for the plaintiff is alleging only half the truth. If he were intent upon setting forth the whole of this matter to the court, he should continue and state that the application for the \$10,000.00 was withdrawn by the attorneys for the receiver and was not thereafter pressed in any way, shape, or form.

But counsel for the plaintiff, in paragraph 44 of his answer, himself discloses when this matter was brought to the attention of the receiver where he says:

"In January, 1924, the said receiver's attorneys discovered that they could not secure the payment of \$10,000.00 out of the funds of Behn, Meyer & Company, Ltd., in the hands of the Alien Property Custodian, because the company itself had theretofore and in 1922 sued to recover the funds so held and the said suit was still pending."

It may be noted in passing how counsel for the plaintiff again attempts to insinuate in that sentence that the claim for \$10,000.00 was still being pressed and had not been withdrawn; but that is not the important part of that sentence in this regard. The important part is that it was not until January, 1924, that anybody officially representing the receiver was made aware of the existence of this suit. Attempt was at once made to obtain from the Philippine Islands the necessary certified copy of papers to support an application for an intervention. These papers were prepared and returned to this country as expeditiously as possible, and, being received here in the latter part of September, a motion to intervene was drawn up and filed as promptly as possible.

It is to be remembered at the same time that between the dates of September 26, 1923, and May 28, 1924, the receiver, Joseph, was not in a position to intervene. He was removed on September 26; the bill of exceptions was not completed and filed before May 28, 1924. Furthermore, during this period of time the case of Behn, Meyer *vs.* Miller *et al.* was pending in the court.

To sum up, it appears that the case of Behn, Myer *vs.* Miller was argued in the Court of First Instance, appealed and argued in the Court of Appeals before the receiver had been made aware of it or before he had succeeded in bringing home satisfactorily to himself the illegality and wrongdoing of Menzi, Bordman, and the Bank of the Philippine Islands; before, therefore, he had satisfied himself that he was in possession of evidence justifying him to take action for the recovery of the properties which those parties had stolen, and to recover the funds which they had wrongfully paid over to the Alien Property Custodian. No sooner had he given evidence that he was in that position than the parties in question to save themselves from that attack, attacked him in turn. It was not until May of this year that he was in a position to intervene in this court and he has now intervened in approximately one year from the date when he first was subjected to attacks in his receivership.

(c) THIS SUIT IS NOT BROUGHT BY PERSONS PROPERLY REPRESENTING BEHN, MEYER & COMPANY, LTD.

Counsel for the plaintiff in this suit, in paragraph 29 *et seq.*, on page 20 *et seq.* of his answer, endeavors to set up the fact that this suit is properly being maintained by Behn, Meyer & Co., Ltd. This contention has already been denied by the intervener.

In order to substantiate his position, counsel for the plaintiff is compelled first of all to rest his arguments upon the fact that Behn, Meyer & Company was not seized by the British Public Trustee. To this end he quotes a letter from the comptroller of the local clearing-house at Singapore as follows:

“Under emergency local legislation only the business of Behn, Meyer & Company in the colony was wound up and not Behn, Meyer & Company, Ltd., as a whole.”

This letter, far from substantiating counsel's position, effectively refutes it. Behn, Meyer & Company of Singapore was Behn, Meyer & Company as a whole. The letter says that that company was wound up. It is submitted that this means that the existence of the company was terminated according to the procedure known in English law as “winding up” and laid down and regulated by the Companies Act (Consolidated) of 1906. The procedure is one involving the realization of all assets in money, the payment of outstanding liabilities, and the payment of the balance to the shareholders and others entitled. This was the process applied to Behn, Meyer & Co., Ltd., of Singapore, and when concluded all that remained to the stockholders was the right to demand from the liquidator their proportionate part of the balance remaining. The British Public Trustee undertook to wind up the company. He seized all of it that he could seize—that is to say, the company at Singapore. He did not wind up the whole of the business of the company for the reason, as the letter above quoted says:

“Moreover, it was not possible to wind up the business of the branches of the firm in foreign countries as local law had no jurisdiction over them.”

His authority to do so appears from the following:

*Amendment to the Trading with the Enemy Act,
1916.*

SECTION I (1). Where it appears to the Board of Trade that the business carried on in the United Kingdom by any person, firm or company is by reason of enemy nationality or enemy association of that person, firm or company, or of the members of that firm or company or any of them, or otherwise, carried on wholly or mainly for the benefit of enemy subjects, or under the control of enemy subjects, the Board of Trade shall make an order either:

- (a) prohibiting the person, firm or company from carrying on business.
- (b) requiring the business to be wound up.

SECTION I (3). The distribution of any sums or other property resulting from the realization of any assets of the business, whether those assets are realized as the result of an order requiring the same rules as * * * *provided*, that any sums or other property which had a state of war not existed would have been payable or transferable to enemies shall be paid and transferred to the custodian under the Trading with the Enemy Act to be dealt with by him in like manner as money to him paid under that Act.

NOTE.—The Trading with the Enemy Act, section 5, provides for the holding of enemy money paid to the custodian.

Counsel for the plaintiff, following the above quotation, has the temerity to make this statement:

“The British authorities have not assumed control of the corporation or superseded its directors and officers in any way or put in any new directors or officers.”

When the business of the company was wound up there was nothing over which the British authorities could assume control. They did not supersede the directors and officers of the company for the reason that the directors and officers no longer existed. The stockholdings of every member of that Company were seized, and there remained nothing but the franchise originally granted to the men who formed the company by the British government. This franchise was taken back by the British and may or may not now be in existence. If it is in existence it is held by the British Public Trustee.

After Behn, Meyer & Company, of Singapore, was seized by the British Public Trustee and its business wound up there remained nobody corporate which could function. The script upon which the shares were written may have remained in the possession of the individual stockholders, but they were worthless pieces of paper. The interests represented by them had long ago ceased to exist. It is, therefore, palpably absurd upon the face of it to allege as is alleged in the answer that certain stockholders of Behn, Meyer & Company, Ltd., did any act which could in any possible way be construed as the act of the corporation. The answer itself sets out that Lorenz Mayer, Laspe and Witthoefft had purchased all the stock of the company by December, 1921. But the answer equally says that the transfer of the stock to them took place after the seizure of the Philippine branch by the Alien Property Custodian, and, therefore, after the British Public Trustee had seized the parent company at Singapore. These persons were alien enemies of Great Britain; it is so alleged by the motion papers of the inter-

vener and is not denied by the answer. Therefore by the law of England their transfer was wholly void:

British Trading with the Enemy Act, 1914.

SECTION (8). No transfer made after the passing of this act by or on behalf of an enemy of any security shall confer any rights or remedies in respect thereof * * * and no company shall take any cognizance of or otherwise act upon any notice of such a transfer.

If these three persons bought anything, therefore, they bought nothing but worthless script. However, as above stated, these three named persons were German nationals and residents of Germany. They, therefore, had no interest whatsoever in Behn, Meyer & Company after the British Public Trustee had seized it. They were enemy aliens and the British law looking behind the corporation would have discovered and did discover their enemy character and their holdings were instantaneously forfeited under the British Trading with the Enemy Act. Their holdings once gone, they could not recover them, and, therefore, even supposing that all the other stockholders of Behn, Meyer & Company were not enemy aliens of Great Britain, still it would have been impossible for these three named men to buy all the stock of Behn, Meyer & Company for the reasons that they would never buy back their own which had been seized.

The answer of plaintiff to this motion, however, alleges that these three persons did in fact buy and become possessed of all the stock of Behn, Meyer & Company, Ltd. If this is true, then the allegations of the original bill of complaint are

not true. If this is true, then all the stock of Behn, Meyer & Co., Ltd., was enemy owned. But the bill, in paragraph VIII, alleges:

“* * * by the plaintiff, a subject of the British Empire, the minority of whose stock was not owned, held, or possessed by any citizen, subject, or resident of any enemy nation or any ally thereof. * * *

The purpose of the allegation in the answer that all the stock was owned by these three persons was, of course, to leave no doubt but that all the stock of the company was present at the extraordinary general meeting of shareholders, which the answer next proceeds to set up.

Counsel for the plaintiff, in Sections 31-40, on page 21 *et seq.*, of the said answer, sets out in detail the actions taken by these three men representing themselves to be Behn, Meyer & Company for the purpose of giving a valid power of attorney to Emil W. Martens by virtue of which he might bring this suit. Counsel for the plaintiff obviously does so because he must substantiate the validity of Martens' power of attorney, in order to show that this suit was rightfully brought by Behn, Meyer & Company. But at the very outset of his allegations in Section 31 it is to be noted that he alleges that an extraordinary general meeting of shareholders of Behn, Meyer & Company was held, but he does not allege the necessary facts to prove that this meeting was lawful and a legal meeting.

It is submitted that such facts are not alleged because they did not exist, because this meeting was not a legal valid meeting. This company was incorporated at Singapore, Straits Settlements. It is therefore governed by the Companies Ord-

nance of the Straits Settlements, enacted March 28, 1889. This ordinance provides as follows:

SCHEDULE THE FIRST, ATTACHED TO SAID ORDINANCE
AND A PART OF IT.

TABLE (A)

*Regulations for the Management of a Company
Limited by Shares.*

(32) The directors may, whenever they think fit, and they shall upon a requisition made in writing by not less than one-fifth of the number of the members of the company, convene an extraordinary general meeting.

(33) Any requisition made by the members shall express the object of the meeting proposed to be called and shall be left at the registered office of the company.

(34) Upon the receipt of such requisition the directors shall forthwith proceed to convene an extraordinary general meeting. If they do not proceed to convene the same within twenty-one days from the date of the requisition, the requisitioners or any other members amounting to the required number may themselves convene an extraordinary general meeting.

(58 and 59) Provide for the retiring of the directors, third of their number each year.

The company had had no meetings since 1914. Therefore, by Sections 58 and 59, *supra*, by 1921 there could be no directors left in office for all had been automatically retired by law. Under such circumstances by sections 33 and 34, *supra*, a requisition for a general meeting should have been made at the registered office of the company at Singapore. This

was not done nor was this meeting held at Singapore. It appears that it was held on December 13, 1921; that the meeting of directors which followed it was held December 13, 1921; that the meeting of the consulting committee which followed the meeting of directors was held December 13, 1921; and that the power of attorney given to Emil W. Martens pursuant to authority granted in these three meetings was given to him on December 14, 1921. The attestation before the notary public to this power of attorney is dated December 14, 1921, in the city of Hamburg, in Germany. It is submitted that this meeting of stockholders was not merely illegal for the reason that there were no stockholders present at it, but that it was not held in the manner in which such meetings were under the law governing this corporation to be held.

It is further submitted that the illegality and invalidity of the power of attorney sufficiently appear from the answer of the plaintiffs itself, and that therefore the act of Emil W. Martens in bringing this suit is not the act of Behn, Meyer & Company, Ltd. The power of attorney does not bear the seal of the corporation. The Companies Ordinance above referred to prescribes as follows:

Article 43. Upon the registration of the memorandum of association and the articles of association in cases where articles of association are required by this ordinance * * * the subscribers of the memorandum of association, together with such other persons as may from time to time become members of the company, shall be a body corporate by the name contained in the memorandum of association, capable forthwith of all the functions of an incorporated company and having perpetual existence and a common seal.

Article 70. Contracts on behalf of any company under this ordinance may be made as follows (that is to say) :

(a) Any contract which if made between private persons would be by law required to be in writing and if made in accordance to English law to be under seal may be made in writing under the common seal of the company.

Article 84. Any company under this ordinance may by instrument in writing under its common seal empower any person either generally or in respect to any specific matters as its attorney to execute deeds on its behalf in any place not situated in the colony; and every deed signed by such attorney on behalf of the company and under his seal shall be binding on the company as if it were under the common seal of the company.

Article 69. * * * and shall have its name engraved in legible characters in such language (English) on its seal.

It is submitted that as a matter of law no power of attorney which seeks to give such wide power to an agent to execute any and all kinds of papers would be valid without it was under seal. The law clearly intended that where the agent was to execute papers under seal, there his power from the Corporation must be under seal. But even if the technicalities of the seal might not vitiate an act otherwise valid, is it reasonable to suppose that a corporation would attempt to what is here done without sealing the instrument? Where the law so specifically requires the company to have a seal, is it credible that the company would attempt to make so important an instrument as this power of attorney without using it?

Were it, however, true that this suit in fact is being brought by the corporation of Behn, Meyer & Co., Ltd., that fact would not entitle the company to receive from the Government the moneys paid over to the Alien Property Custodian, which are the subject-matter of this suit. It is to be remembered that these moneys represent the assets of Behn, Meyer & Company in the Philippine Islands. These assets were within the jurisdiction of the courts of the Philippine Islands, and at this point it must be considered what was the effect of the admission of Behn, Meyer & Company to do business in the Philippine Islands under the original license of 1907. By making application to be admitted to do business in the Philippine Islands and by accepting the license above referred to from the Philippine authorities, Behn, Meyer & Company, Ltd., became liable, to the extent of their business in the Philippine Islands, of all the laws which governed domestic corporations within those Islands. Its business became amenable to the courts of the Philippine Islands, which acquired the power to enforce against the business in the Philippine Islands all claims and demands such as they enforce against the assets of domestic corporations of the Islands. It was not merely a physical but a legal fact that the assets of Behn, Meyer & Company which constituted the Philippine Islands business were under the jurisdiction and control of the courts of the Philippine Islands. The money here sought to be recovered is money resulting from assets in the Philippine Islands. It is, therefore, money over which the courts of the Philippine Islands have jurisdiction and control. As between the receiver appointed by the courts of the Philippine Islands to take charge of the business there and the Company itself, it can hardly be questioned but that the receiver will take precedence in the re-

covery of such money wherever it may be found. This money is a fund out of which the creditors of the Philippine Islands business are to be paid. The determination of the question of what the receiver shall do with any balance remaining in his hands after the payment of the creditors is a matter with which this controversy is not concerned. To pay this money over directly to the corporation is to render without force or effect the laws of the Philippine Islands, which made the business of this corporation in the Philippine Islands subject to all the laws of those Islands. Such a provision was clearly made for the protection of creditors in the Philippine Islands. To return this money to any other place than the Philippine Islands is to render the protection, afforded by the laws of the Philippine Islands to creditors, nugatory and ineffective.

(d) THIS INTERVENTION IS NECESSARY TO DO JUSTICE IN
THE PREMISES.

Counsel for the plaintiff in paragraph 24 on page 19 of the answer sets up that even supposing the interveners should be properly appointed receiver of Behn, Meyer & Company, Ltd., of the Philippine Islands, nevertheless, he is not entitled to intervene because he would have no standing before the courts of this jurisdiction to sue for the funds in question in this suit. Counsel for the plaintiff cites *Sterret vs. The Second National Bank*, 248 U. S., 73, in support of his contention. It is submitted that *Sterret vs. The Second National Bank* is no authority whatsoever to support it. In *Sterret vs. The Second National Bank* the plaintiff, receiver of a corporation in one jurisdiction, endeavored to

bring suit in another jurisdiction, and it was held, according to the well-known rule, that he could not do so. Of course, in such a case ancillary receivership proceedings are necessary in the jurisdiction in which the suit is to be brought if that jurisdiction is not the jurisdiction appointing the receiver.

It is, however, submitted that the receiver in this case would not be precluded from suing in this jurisdiction. Since the decision in *Sterrett vs. Second National Bank*, Congress passed the Act of June 5, 1920, amending Section 9 of the Trading with the Enemy Act, in which amendment it is provided:

"Any person not an enemy or an ally of an enemy claiming any interest in any money, etc., which may have been conveyed, etc., to the Alien Property Custodian or seized by him * * * such claimant may * * * institute a suit in equity in the Supreme Court of the District of Columbia * * *."

The receiver, therefore, would have the statutory right to sue in the District of Columbia, though not the jurisdiction in which he was appointed.

In this present case, however, the receiver is not attempting to bring an action. He is asking to be allowed to intervene in an action already brought. It is submitted that it is now settled law that a party may intervene in a court in which he would have no standing to bring a suit in his own behalf. This was specifically the holding in *Marye vs. Diggs*, 98 Va., 749. In that case the Supreme Court of the State of Virginia upheld the right of the State to intervene in a proceeding between a county and a taxpayer in a court in which the State would have no jurisdiction to sue the

taxpayer, and in so holding cited *Stuart vs. Dunham*, 115 U. S., 61.

In *Stuart vs. Dunham* the Supreme Court held that where a cause had been removed to the Federal court parties might properly intervene in the Federal court, although they might not have been entitled to maintain an action in the Federal court against the defendant.

Counsel for the intervener wishes to call the attention of the court to the following language in the decision in *Stuart vs. Dunham*:

"The right of the court to proceed to decree between the appellants and the new parties would not depend upon different citizenship; because the bill having been filed by the original complainant on behalf of themselves and all other creditors choosing to come in and share the expenses of the litigation, the court in exercising jurisdiction between the parties could instantly decree in favor of all other creditors coming in under the bill. Such a proceeding would be ancillary to the jurisdiction acquired between the original parties and it would merely be a matter of form whether new parties should come in as co-complainant, or before a master, under a decree ordering a reference to prove the claims of all persons entitled to the benefit of the decree."

From the above language it might be inferred that the decision of the Supreme Court in this case was somewhat affected by the fact that the bill was filed on behalf of the original complainant and all other creditors who might come in under it. However, it is submitted that since consent of parties cannot give jurisdiction to a court, it would seem that the filing of such a bill would not of itself confer upon the

court jurisdiction to consider the claims of creditors, which otherwise it would not be entitled to consider. Again courts will not litigate in favor of parties not before them. And therefore, very obviously there must be some way of bringing parties before the court who in justice ought to be there even though they might not be able to come before that court in their own right alone.

This latter thought indicates the basic reason upon which this intervention is sought. As above set forth, the intervener, Lazarus G. Joseph, the receiver of Behn, Meyer & Company in the Philippine Islands, has a duty to perform which is to collect the assets of the Philippine branch wherever he is able to find them. The long and involved sequence of facts in this case finally discloses that part of the assets are not merely in the city of Washington, but are there being litigated over by certain parties who seek to obtain them. It further appears that the bill filed by these parties does not bring before the court the true and accurate state of facts obtaining with regard to these assets. It is equally true that this intervener was not able to intervene at any prior stage of this proceeding either to protect his own rights or to inform the court of a truth concerning the matters in litigation. If hereafter this cause is remanded to the Supreme Court of the District the receiver can intervene in the usual way. But at this present time and in this present emergency there is no other course open to him than to appear herein as an intervener, lay before the court the true state of facts and request the court to take such action as justice and equity demands.

In this connection it is to be remembered that Federal equity rule No. 37 provides that intervention may be at any

time; and it is submitted that, while the general rule is that intervention is not permitted at a final decree, nevertheless when taken in conjunction with the rule that a party has an absolute right to intervene when if he does not do so his rights will be lost to him, equity rule 37 may properly be interpreted as allowing this intervener to intervene at this stage of the proceedings.

III.

The Plaintiff's Answer Herein is Inconsistent With Its Former Pleadings and Sets up New Irrelevant and Immaterial Matter.

It is submitted that when the original bill filed by the plaintiffs in this case and the answer to the motion of intervention filed by them are read together it is at once apparent that:

(1) The two are inconsistent, because in the bill of complaint the seizure of Behn, Meyer & Company is alleged to be illegal and unlawful, while in the answer, the said seizure is described as being conducted regularly, legally and lawfully by the Alien Property Custodian.

(2) The allegations of the bill is to the effect that part of the stock was not enemy owned; if the facts alleged in the answer are true the entire stock was enemy owned.

(3) The bill is silent as to any seizure by the British Public Trustee of Behn, Meyer; the answer claims that Behn, Meyer was not seized; but in the answer it appears that the British authorities "wound up" Behn, Meyer at Singapore, and alleges no facts

to explain why the winding up of Behn, Meyer at Singapore was not a complete seizure of the corporation since its home office was in Singapore and it was incorporated there.

(4) That the answer alleges an extraordinary stockholders' meeting, but does not allege facts which would show that this meeting was regularly and properly held.

Considering the allegations of the answer seriatim we find as follows:

(1) Paragraph III alleges that Harrison seized Behn, Meyer on behalf of the Custodian.

(2) Paragraph VI alleges that Moffat concluded the liquidation begun by Harrison.

(3) Paragraph VII alleges that the custodian authorized and approved what was done with regard to Behn, Meyer.

From the above it would seem that the seizure of Behn, Meyer is justified as an orderly, regular and legal procedure, but if such is the force of the allegations in the answer how can they be reconciled with the allegations of the complaint:

Paragraph VIII of the bill:

"The said conveyance, transfer, assignment, delivery, and payment thereof to the Alien Property Custodian were illegal, wrongful and void."

(4) Paragraph V of the answer sets up that there was a demand made on Behn, Meyer and under the demand Behn, Meyer was determined to be an enemy; quoting letter from Custodian to that effect.

The force of this allegation must be that there was an illegal determination of enemy status and proper demand so that the money paid under it was properly paid. But if this is so how is such allegation to be reconciled with the bill:

Paragraph VIII of the bill:

"That no due or legal determination was ever made under said Trading with the Enemy Act that the plaintiff was an enemy or an ally of an enemy; that no due and lawful demand for said property and assets as required by law was ever made or served upon the plaintiff."

In paragraph X of the answer the allegation is made that three years before Joseph was appointed receiver there was no longer property of Behn, Meyer in the Philippine Islands and no right for it to do business there, because the same was destroyed by the Alien Property Custodian.

That would be the result if the seizure had been rightful if there had been a due and lawful demand made; but how can such allegation be correct if the allegations of the bill of complaint are correct that the whole proceeding was void from start to finish.

In paragraph XIV of the answer, it is alleged that Jureidini & Bros. in 1922 could not comply with the provisions of Section 9-e of the Trading with the Enemy Act, because the date did not arise in reference to money held by the Custodian.

The answer omits to point out that Jouredini could have complied with that section because if the property was wrongfully sold a trust was impressed upon its purchase price and the same can be followed.

In paragraph XV, attempt is made to justify the removal of Joseph as receiver, but allegations concerning the actions of a court in Manila.

XV. "It should be pointed out here as the Court of First Instance of Manila itself subsequently did in its opinion of September 26, 1923. * * *"

Why does the brief not point out that the judge who rendered the opinion of September 26 was not the judge who appointed the receiver?

Paragraph XVI alleges there are other matters connected with said receivership and its vacating.

(1) "In this action the said Joseph moved to compel Menzi to deliver to him the books of Behn, Meyer, which said Menzi held for the account of John Bordman who had purchased them."

In the motion, this sale to Bordman is attacked as illegal for the reason that Bordman was an employee of the Alien Property Custodian. Why does the answer fail to either admit or deny this allegation concerning Boardman?

(2) "Menzi, Bordman and the Bank of the Philippine Islands further moved for leave to intervene in the action for the purpose of setting aside the alleged receivership."

Why is the date of such intervention not set forth so that the court might see that said intervention takes place after the receiver had commenced a suit for fraud against Menzi and Bordman and the bank.

(3) Paragraph XVI sets up Section 21 with the Philippine code providing for intervention by one who had an interest.

Where does the interest of Menzi or the Bank of the Philippine Islands appear?

If Menzi had sold the assets what was he doing with the books of the concern?

It is to be noted that the answer of Menzi to the rule to show cause alleges the books to be in the possession of Bordman; but in the decision of Diaz sent out in paragraph XVII of this answer, the books are said to be in the possession of Menzi.

Paragraph XVIII of the answer sets up that Joseph moved for reconsideration of the ruling of Diaz which was denied: why does the answer not go on and admit or deny the filing of the bill of exceptions?

Paragraph XIX sets up that Joseph, as receiver, sued the Hamburg American line and was defeated.

Why does the answer not show the court that the attorneys for the Hamburg American were the same attorneys as the attorneys for Menzi and Bordman; that in this case they demurred to the complaint; but that Menzi and Bordman did not attempt to intervene in *Behn, Meyer vs. Stanley* until six months later after they had been attacked for fraud and theft.

Paragraph XX sets up the decision of the Supreme Court of the Philippine Islands in the Hamburg American case.

No details are provided except a telegram from the clerk of the court.

It does not appear that the receivership question was ever properly before the court.

The answer does not explain a receivership company collaterally attacked, as seems to have been done in this decision.

Paragraph XXI alleges as follows:

"Exhibits A and B hereto attached make it plain that the court which originally attempted to appoint him receiver has since declared said appointment to have been improvidently made as a result of a failure to disclose to it essential matters of fact."

This statement is not the truth. The same court did not remove him which appointed him; the substitute judge removed him when the regular judge had appointed him.

Judge Harvey knew the facts of this case. He said so in his order.

Paragraphs XXIX-XL set up and endeavor to allege matters to prove that this suit is properly brought by Behn, Meyer. The allegations themselves are sufficiently extraordinary. The matters which failed to be alleged are even more significant in their omission.

Paragraph XXIX alleges:

"It is not true that the British authorities have either dissolved the corporation of Behn, Meyer or taken over the corporation itself as such."

And yet in the same paragraph a letter from the Comptroller of Local Clearing House, Singapore, is set forth as follows:

"Under emergency local legislation only the business carried on by Messrs. Behn, Meyer & Company, Ltd., in the colony was wound up and not Behn, Meyer & Company, Ltd., as a whole."

If, when the Public Trustee wound up Behn, Meyer & Company, Ltd., of Singapore, he did not in fact take over the corporation, then what did he do?

The British Public Trustee in winding up a concern in which enemy interests appeared sold those enemy interests and the proceeds would be in an enemy trust at London.

It is noteworthy that the answer does not allege that the original stockholders who were enemies at the time the British "wound up." Behn, Meyer & Company still hold their stock. Such allegation is not made because it could not be made.

Note in this connection that Lorenz Mayer, Laspre, and Withoefft were original stockholders of Behn, Meyer; note also they were enemy aliens being German Nationals; how would they be able to preserve any holdings in the company at all if the British Trustee had seized the company?

In the motion of intervention, it is alleged that they were enemy aliens; why is this allegation not either admitted or denied?

Note particularly: The answer alleges in this paragraph that Lorenz Mayer, Laspre and Withoefft owned the entire stock of the corporation before this suit was brought. These men were alien enemies and, therefore, the entire company was enemy owned.

How can this be reconciled with paragraph VIII of the bill, which says:

"The minority of whose capital stock was not held or possessed by any citizen subject or resident of any enemy nation."

Paragraph XXXI alleges an extraordinary general meeting of shareholders. It does not allege where this meeting was held.

It appears, however, from the articles of incorporation of

Behn, Meyer & Company that the home office and domicile of Behn, Meyer was Singapore, and that it was organized under the laws of Singapore.

This extraordinary meeting was not held at Singapore. It was held at Hamburg, as appears from the attestation of the power of attorney, which was executed the day after it was held, namely, December 14, 1921.

If such a meeting could be legal, why is it not alleged where it was held and facts alleged which would show the holding of it in that place to be legal. On the face of it, such meeting is illegal, for it was an endeavor to do a corporate act outside the domicile of the corporation and outside the jurisdiction in which the corporation lived, which jurisdiction is the only thing that gives force and effect to the acts of the corporation. (See pages 21 & 22 of this brief.)

In paragraph XXXV, the giving of the power of attorney to Martens is set up and alleged to be the legal act of the corporation. This power of attorney is appended as an exhibit to the answer. It does not bear the seal of Behn, Meyer & Company. Why?

In paragraph XLI it is alleged that one of the attorneys, Henry D. Green, had in 1919, been an attorney in the Alien Property Custodian's office and was familiar with the liquidation of the Philippine branches of Behn, Meyer.

Why did they not go on and allege that Mr. Green in his official capacity refused to recommend the approval by the Alien Property Custodian of the very sales of Behn, Meyer & Company's property which are in controversy in this proceeding, and that the same never were approved.

The above allegation in reference to Mr. Green is an at-

tempt to bring home knowledge of this proceeding to the receiver so as to make him guilty of laches.

Why does not the answer set forth that Mr. Green remained in the employ of the Custodian until some time in 1921, and that he could not thereafter act in an official capacity as attorney for this company for two years.

Paragraphs XLII, XLIII set up a claim for \$10,000.00 made by attorneys of the receiver.

Why does the answer not also set up the fact that this claim was withdrawn?

Paragraph XLVII alleges that during the remainder of this present year the receiver took no step to challenge the right of the plaintiff.

During this present year certified copies of necessary papers had to be collected in Manila, drawn up, executed and sent to this country. As soon as they were received this intervention was filed.

In short, it appears that the attorneys for the plaintiff realized that they could have no standing before this court if, in fact, Joseph was the receiver of Behn, Meyer & Company.

That receivership must be denied at all costs.

But if the seizure and liquidation of Behn, Meyer & Company was illegal and void, then there would be adequate occasion for an appointment of a receiver in the Philippine Islands to recover the properties wrongfully and illegally disposed of and diverted from this company.

The attorneys for the plaintiff, therefore, are compelled to set up the regularity and propriety of the proceedings whereby the company was deprived of its property. In so doing they contradict the allegations of their original bill.

Conclusion.

Wherefore, it is submitted, as stated in appellee's brief in conclusion, on page 21, "The appellant is not one of those who is entitled to the return of the property thus seized;" and it is further submitted that Lazarus G. Joseph, the receiver, is such a party and the only party entitled to the return of the property thus seized.

MARION BUTLER,
JOHN W. CLIFTON,
HENRY D. GREEN,

Counsel for Lazarus G. Joseph, Receiver, etc.

BEHN, MEYER & COMPANY, LIMITED, v. MILLER, AS ALIEN PROPERTY CUSTODIAN OF THE UNITED STATES, ET AL.

APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

No. 343. Argued November 24, 1924.—Decided January 5, 1925.

1. A corporation organized in a British colony, which had never been a resident of, nor done business within, any nation at war with the United States since April 6, 1917, or ally of such nation,

was neither an enemy nor ally of an enemy within the meaning of the Trading with the Enemy Act of October 6, 1917, c. 106, 40 Stat. 411, and was entitled under § 9 of the act to recover by suit the proceeds of its property, unlawfully seized by the Alien Property Custodian. P. 471.

2. Amendments added to the Trading with the Enemy Act since the Armistice by Acts of 1920 and 1923—§ 9 (b) pars. 6 and 11; § 9 (c),—authorized restoration or suit for recovery of property seized by the Alien Property Custodian where the President shall determine that the owner was at time of seizure a corporation incorporated within any country other than the United States and was and remains entirely owned by subjects or citizens of nations, states, etc., other than Germany, Austria, Hungary or Austria-Hungary, or a corporation organized or incorporated within any country other than these last enumerated, the control of which, or more than 50% of the interest or voting power in which, was, at the time of such seizure, and remains, vested in citizens or subjects of other nations, states, etc.—*Construed* as not intended to withdraw the right of a corporation, never "enemy or ally of enemy," to recover property unlawfully seized during the war when a majority of its shareholders were Germans. *Id.*
3. Section 7 (c) of the Trading with the Enemy Act, in authorizing seizure of property held "on account of, or on behalf of, or for the benefit of an enemy or ally of enemy," was not intended to empower the President to seize the property of a non-enemy corporation merely because of enemy stockholding interests therein. P. 472.

54 App. D. C. 225; 296 Fed. 1002, reversed.

APPEAL from a decree of the Court of Appeals of the District of Columbia affirming a decree of the Supreme Court of the District which dismissed on motion the appellant's bill against the Alien Property Custodian and the Treasurer of the United States, to recover the proceeds held by the latter, of property unlawfully seized by the former.¹

¹ On November 24, 1924, *Mr. Marion Butler, Mr. John W. Clifton and Mr. Henry D. Green*, on behalf of Lazarus G. Joseph, as Receiver of Behn, Meyer & Company, Limited, in the Philippine Islands, applied for leave to intervene. The application was denied, on the same day, before the oral argument of the case was begun.

Mr. William D. Guthrie, with whom Mr. Isidor J. Kresel and Mr. Bernard Hershkopf were on the brief, for appellant.

Mr. Merrill E. Otis, Special Assistant to the Attorney General, with whom Mr. Solicitor General Beck was on the brief, for appellees.

The effect of amended § 9 (b), par. 6, is to prohibit the return of the property of such corporations as are not therein described, if any portion of their stock was enemy-owned.

The application of the section is not restricted to "enemy" corporations. The words are "a corporation incorporated within any country." Moreover, the application of subsec. (b) is not only to such property of enemies or allies of enemies as has been seized, but "in respect of all money or other property conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian or seized by him hereunder."

Section 9 is a whole. It was enacted as a whole at the time of each of the amendments, that of 1920 and that of 1923. It should be construed as a whole, each part in the light of and as modified by other parts so as to achieve an harmonious interpretation of the several parts. *United States v. Landram*, 118 U. S. 81; *Bryant Co. v. New York Steam Fitting Co.*, 235 U. S. 327; *Market Co. v. Hoffman*, 101 U. S. 112; *Peck v. Jenness*, 7 How. 612. No principle of statutory construction can justify the contention that subsec. (a) of § 9 is to be considered altogether apart from what follows it and with no effect given to the limitations imposed upon subsec. (a) by the remaining language of § 9.

If the contention is sound to the effect that subsec. (a) and § 9 must be taken without regard to the rest of the section, then subsec. (e) becomes of no effect whatsoever.

The appellant was an "enemy" within the meaning of the Trading with the Enemy Act.

We must concede, of course, that appellant was not such a corporation as subdiv. (a) of § 2 expressly describes, since it was neither incorporated within an enemy country nor was it doing business within such territory. But a majority of its stockholders were enemies. It is possible that every share of stock save one was enemy owned.

Section 2 defines as an "enemy" "any individual, partnership, or other body of individuals, of any nationality, resident within the territory . . . of any nation . . . with which the United States is at war." It will scarcely be contended that this language (and all other language in the Act) is not to be liberally construed in favor of upholding the power of the Government to do everything regarded by the executive as necessary in the prosecution of a war. But in a very real sense, if not in a strictly technical sense, a corporation is but a "body of individuals." Will the Court say, keeping in view the character of this act as a war measure, that by reason of somewhat attenuated technical distinctions the executive branch of the Government engaged in the prosecution of a war could not, through the thin corporation covering, strike at the "enemies" underneath—the "body of individuals" who were within even the letter of the definition the "enemies" of the nation?

This Court has often looked through the corporation to the individuals composing it. *Bank of the United States v. Deveaux*, 5 Cr. 61; *McKinley v. Wheeler*, 130 U. S. 630; *United States v. Northwestern Express Co.*, 164 U. S. 686.

That Congress intended that the corporation shell should be pierced is apparent from the amendment of June 5, 1920, § 9 (b), par. 6, and from that of March 4, 1923, § 9 (b), par. 11.

Further light is to be had from the Joint Resolution terminating the war, July 2, 1921, c. 40, § 5; 42 Stat. 105,

which contemplated the retention of such property as belonged when seized to German and other enemy nationals whether in their individual or corporate capacities. Property which has come under the control of the United States "from any source . . . whatsoever" is to be retained. When this resolution was passed the property of this appellant and others in the same situation had been taken and was under the control of the United States and was therefore a part of the property contemplated by the act.

The war powers of the Executive, having their origin in the Constitution, embraced the right of temporary seizure. No duty was incumbent on the Executive to inquire of Congress who were enemies, or whether those who in their individual capacities were concededly enemies were also enemies in a corporate capacity. See *Steamship St. Tudno*, 5 Lloyds Prize Cas. 198, (1916 Probate, 291); *The Michigan*, 5 Lloyds Prize Cas. 42; *Daimler Co. v. Continental Tyre & Rubber Co.*, 2 A. C. [1916] 307.

The only provision in the entire act for the taking over of enemy property by the Alien Property Custodian (except as to enemy-owned shares of stock in American corporations) was § 7, subdiv. (c). This provision authorized the taking over of the property of a corporation of a country other than the United States if, as here, a majority of its stock was enemy owned. Certainly, in a very real sense the property of a corporation may be said to be held "on account of, or on behalf of, or for the benefit of" its stockholders. The executive department construed this provision as authorizing the seizure of the property of a corporation a majority of whose stock was enemy owned. Moreover, throughout the act is indicated the intent of Congress that the Government should look beneath the corporate covering and consider whether the stockholders were enemies. See, for

examples, the first part of § 7, as to enemy stockholders in American corporations, and, also, pars. 6 and 11 of subsec. (b) of § 9, as amended.

MR. JUSTICE McREYNOLDS delivered the opinion of the Court.

Since December, 1905, the appellant, Behn, Meyer & Company, Limited, has been a corporation organized under the laws of The Straits Settlements, a crown colony of the United Kingdom of Great Britain and Ireland. It has never been a resident of nor has it done business within the territory of any nation at war with the United States since April 6, 1917, or an ally of such nation. Prior to February, 1918, under the supervision of Menzi, a stockholder and citizen of Switzerland, it carried on business in the Philippine Islands. During that month, and while subjects of Germany held most of its stock, the Alien Property Custodian, claiming authority under the Trading with the Enemy Act, seized and converted into cash the corporation's assets found in those Islands. The proceeds are held by him or by the Treasurer of the United States.

Alleging that its property had been improperly seized and the proceeds were being unjustly withheld, the Company brought suit to recover them in the Supreme Court, District of Columbia, July 28, 1922. Upon motion the trial court dismissed the petition, and the Court of Appeals affirmed the decree.

Following much consideration Congress passed the original Trading with the Enemy Act, approved October 6, 1917, c. 106, 40 Stat. 411. It is long (nineteen sections), rather complicated, and evinces the purpose to clothe the President with definitely restricted powers in respect of seizing property of those designated as enemies. It has been amended several times but has always contained the original provisions (§ 9) allowing recovery

of seized property which did not in fact belong to an enemy. "By § 9, as twice amended, any one, 'not an enemy or ally of enemy,' claiming any interest, right or title in any money or other property so sequestered and held may give notice of his claim and institute a suit in equity. . . . [The act] distinctly reserves to any claimant who is neither an enemy nor an ally of an enemy a right to assert and establish his claim by a suit in equity unembarrassed by the precedent executive determination. Not only so, but pending the suit, which the claimant may bring as promptly after the seizure as he chooses, the property is to be retained by the Custodian to abide the result and, if the claimant prevails, is to be forthwith returned to him. Thus there is provision for the return of property mistakenly sequestered; and we have no hesitation in pronouncing it adequate, for it enables the claimant, as of right, to obtain a full hearing on his claim in a court having power to enforce it if found meritorious." *Stoehr v. Wallace*, 255 U. S. 239, 243, 246; *Central Union Trust Co. v. Garvan*, 254 U. S. 554; *Commercial Trust Co. v. Miller*, 262 U. S. 51.

Section 2, which has remained unchanged, declares that "person" shall include corporation or body politic and the word "enemy" shall be deemed to mean—

"(a) Any individual, partnership, or other body of individuals, of any nationality, resident within the territory (including that occupied by the military and naval forces) of any nation with which the United States is at war, or resident outside the United States and doing business within such territory, and any corporation incorporated within such territory of any nation with which the United States is at war or incorporated within any country other than the United States and doing business within such territory.

"(b) The government of any nation with which the United States is at war, or any political or municipal sub-

division thereof, or any officer, official, agent, or agency thereof.

"(c) Such other individuals, or body or class of individuals, as may be natives, citizens, or subjects of any nation with which the United States is at war, other than citizens of the United States, wherever resident or wherever doing business, as the President, if he shall find the safety of the United States or the successful prosecution of the war shall so require, may, by proclamation, include within the term 'enemy.'"

Also, the words "ally of enemy" shall be deemed to mean—

"(a) Any individual, partnership, or other body of individuals, of any nationality, resident within the territory (including that occupied by the military and naval forces) of any nation which is an ally of a nation with which the United States is at war, or resident outside the United States and doing business within such territory, and any corporation incorporated within such territory of such ally nation, or incorporated within any country other than the United States and doing business within such territory.

"(b) The government of any nation which is an ally of a nation with which the United States is at war, or any political or municipal subdivision of such ally nation, or any officer, official, agent, or agency thereof.

"(c) Such other individuals, or body or class of individuals, as may be natives, citizens, or subjects of any nation which is an ally of a nation with which the United States is at war, other than citizens of the United States, wherever resident or wherever doing business, as the President, if he shall find the safety of the United States or the successful prosecution of the war shall so require, may, by proclamation, include within the term 'ally of enemy.'"

After prohibiting trade with, for or on account of any enemy or ally of enemy, and making sundry provisions

for licenses, appointment of an Alien Property Custodian, reports to him, etc., etc., the original act provided:

"Sec. 7(c). If the President shall so require, any money or other property owing or belonging to or held for, by, on account of, or on behalf of, or for the benefit of an enemy or ally of enemy not holding a license granted by the President hereunder, which the President after investigation shall determine is so owing or so belongs or is so held, shall be conveyed, transferred, assigned, delivered, or paid over to the Alien Property Custodian."¹

"Sec. 9. That any person, not an enemy, or ally of enemy, claiming any interest, right, or title in any money or other property which may have been conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian hereunder, and held by him or by the Treasurer of the United States . . . may file with the said custodian a notice of his claim under oath and in such form and containing such particulars as the said custodian shall require; and the President, if application is made therefor by the claimant, may, with the assent of the owner of said property and of all persons claiming any right, title, or interest therein, order the payment, conveyance, transfer, assignment or delivery to said claimant of the money or other property so held by the Alien Property Custodian or by the Treasurer of the United States

¹ "Whether the objection would be good if it turned entirely on the words of § 7c, on which the plaintiff relies, we need not consider; for they obviously are qualified and explained by § 5, which very plainly enables the President to exercise his power under § 7c 'through such officer or officers as he shall direct.' By the orders already noticed the President directed that this power be exercised through the Alien Property Custodian. It therefore is as if the words relied on had been 'which the President, acting through the Alien Property Custodian, shall determine after investigation' is enemy-owned, etc. In short, a personal determination by the President is not required; he may act through the Custodian, and a determination by the latter is in effect the act of the President." *Stoehr v. Wallace*, 255 U. S. 239, 244, 245.

or of the interest therein to which the President shall determine said claimant is entitled. . . . If the President shall not so order within sixty days after the filing of such application, or if the claimant shall have filed the notice as above required and shall have made no application to the President, said claimant may, at any time before the expiration of six months [enlarged to eighteen months by the Act of December 21, 1921, c. 13, 42 Stat. 351] after the end of the war, institute a suit in equity in the *Supreme Court of the District of Columbia* [Act June 11, 1919, c. 6, 41 Stat. 35] or in the district court of the United States for the district in which such claimant resides, or, if a corporation, where it has its principal place of business (to which suit the Alien Property Custodian or the Treasurer of the United States, as the case may be, shall be made a party defendant), to establish the interest, right, title, or debt so claimed." . . .

Section 9 was materially amended by the Act of June 5, 1920, c. 241, 41 Stat. 977. The original section, quoted above, was reenacted as subsection (a). It provides for recovery when the seized property belonged to one not an "enemy or ally of enemy"—where the taking was in fact without warrant of law. Six subsections—(b), (c), (d), (e), (f) and (g)—were added. Subsection (b) permits recovery by some within the definition of "enemy" whose property had been lawfully seized. Each of its eight numbered paragraphs includes such persons. Subsection (c) and those parts of subsection (b) here specially important follow. All of subsection (b) is printed below.*

* Subsec. (b) In respect of all money or other property conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian or seized by him hereunder and held by him or by the Treasurer of the United States, if the President shall determine that the owner thereof at the time such money or other property was required to be so conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian or at the time when it was voluntarily delivered to him or was seized by him was—

"Sec. 9, Subsec. (b) In respect of all money or other property conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian or seized by him hereunder and held by him or by the Treasurer of the United States, if the President shall determine that the owner thereof at the time such money or other property was required to be so conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian or at the time when it was voluntarily delivered to him or was seized by him was—

"Par. (6) A partnership, association, or other unincorporated body of individuals outside the United States,

(1) A citizen or subject of any nation or State or free city other than Germany or Austria or Hungary or Austria-Hungary, and is at the time of the return of such money or other property hereunder a citizen or subject of any such nation or State or free city; or

(2) A woman who at the time of her marriage was a subject or citizen of a nation which has remained neutral in the war, or of a nation which was associated with the United States in the prosecution of said war, and who prior to April 6, 1917, intermarried with a subject or citizen of Germany or Austria-Hungary and that the money or other property concerned was not acquired by such woman either directly or indirectly from any subject or citizen of Germany or Austria-Hungary; or

(3) A woman who at the time of her marriage was a citizen of the United States (said citizenship having been acquired by birth in the United States), and who prior to April 6, 1917, intermarried with a subject or citizen of Germany or Austria-Hungary, and that the money or other property concerned was not acquired by such woman either directly or indirectly from any subject or citizen of Germany or Austria-Hungary; or

(4) A citizen or subject of Germany or Austria or Hungary or Austria-Hungary and was, at the time of the severance of diplomatic relations between the United States and such nations, respectively, accredited to the United States as a diplomatic or consular officer of any such nation, or the wife or minor child of such officer, and that the money or other property concerned was within the territory of the United States by reason of the service of such officer in such capacity; or

or a corporation incorporated within any country other than the United States, and was entirely owned at such time by subjects or citizens of nations, States, or free cities other than Germany or Austria or Hungary or Austria-Hungary and is so owned at the time of the return of its money or other property hereunder; . . ."

"Then the President, without any application being made therefor, may order the payment, conveyance, transfer, assignment, or delivery of such money or other property held by the Alien Property Custodian or by the Treasurer of the United States, or of the interest therein to which the President shall determine such per-

(5) A citizen or subject of Germany or Austria-Hungary, who by virtue of the provisions of sections 4067, 4068, 4069, and 4070 of the Revised Statutes, and of the proclamations and regulations thereunder, was transferred, after arrest, into the custody of the War Department of the United States for detention during the war and is at the time of the return of his money or other property hereunder living within the United States; or

(6) A partnership, association, or other unincorporated body of individuals outside the United States, or a corporation incorporated within any country other than the United States, and was entirely owned at such time by subjects or citizens of nations, States, or free cities other than Germany or Austria or Hungary or Austria-Hungary and is so owned at the time of the return of its money or other property hereunder; or

(7) The Government of Bulgaria or Turkey, or any political or municipal subdivision thereof; or

(8) The Government of Germany or Austria or Hungary or Austria-Hungary, and that the money or other property concerned was the diplomatic or consular property of such Government; or

(9) [Added by Act March 4, 1923.] An individual who was at such time a citizen or subject of Germany, Austria, Hungary, or Austria-Hungary, or who is not a citizen or subject of any nation, State, or free city, and that such money or other property, or the proceeds thereof, if the same has been converted, does not exceed in value the sum of \$10,000, or although exceeding in value the sum of \$10,000 is nevertheless susceptible of division, and the part thereof to be returned hereunder does not exceed in value the sum of \$10,000: *Provided*, That an individual shall not be entitled, under

son entitled, either to the said owner or to the person by whom said property was conveyed, transferred, assigned, delivered, or paid over to the Alien Property Custodian. . . ."

"Subsec. (c) Any person whose property the President is authorized to return under the provisions of subsection (b) hereof may file notice of claim for the return of such property, as provided in subsection (a) hereof, and thereafter may make application to the President for allowance of such claim and/or may institute suit in equity to recover such property, as provided in said subsection, and with like effect. The Presi-

this paragraph, to the return of any money or other property owned by a partnership, association, unincorporated body of individuals, or corporation at the time it was conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian, or seized by him hereunder; or

(10) [Added by Act March 4, 1923.] A partnership, association, other unincorporated body of individuals, or corporation, and that it is not otherwise entitled to the return of its money or other property, or any part thereof, under this section, and that such money or other property, or the proceeds thereof, if the same has been converted, does not exceed in value the sum of \$10,000, or although exceeding in value the sum of \$10,000, is nevertheless susceptible of division, and the part thereof to be returned hereunder does not exceed in value the sum of \$10,000: *Provided*, That no insurance partnership, association, or corporation, against which any claim or claims may be filed by any citizen of the United States with the Alien Property Custodian within sixty days after the time this paragraph takes effect, whether such claim appears to be barred by the statute of limitations or not, shall be entitled to avail itself of the provisions of this paragraph until such claim or claims are satisfied; or

(11) [Added by Act March 4, 1923.] A partnership, association, or other unincorporated body of individuals, having its principal place of business within any country other than Germany, Austria, Hungary, or Austria-Hungary, or a corporation, organized or incorporated within any country other than Germany, Austria, Hungary, or Austria-Hungary, and that the control of, or more than 50 per centum of the interests or voting power in, any such partnership,

dent or the court, as the case may be, may make the same determinations with respect to citizenship and other relevant facts that the President is authorized to make under the provisions of subsection (b) hereof."

Section 9 was further amended by the Act of March 4, 1923, c. 285, 42 Stat. 1511, 1512, 1513, by adding to subsection (b) three new paragraphs—9, 10 and 11. Each of these empowers certain persons to recover property or funds held by the Alien Property Custodian and is broad enough to include some always within the general definition of "enemy." Paragraph 11 follows—

"Subsec. b, par. (11) A partnership, association, or other unincorporated body of individuals, having its principal place of business within any country other than Germany, Austria, Hungary, or Austria-Hungary, or a corporation, organized or incorporated within any country other than Germany, Austria, Hungary, or Austria-Hungary, and that the control of, or more than 50 per

association, other unincorporated body of individuals, or corporation, was at such time, and is at the time of the return of any money or other property, vested in citizens or subjects of nations, States, or free cities other than Germany, Austria, Hungary, or Austria-Hungary: *Provided, however,* That this subsection shall not affect any rights which any citizen or subject may have under paragraph (1) of this subsection;—

Then the President, without any application being made therefor, may order the payment, conveyance, transfer, assignment, or delivery of such money or other property held by the Alien Property Custodian or by the Treasurer of the United States, or of the interest therein to which the President shall determine such person entitled, either to the said owner or to the person by whom said property was conveyed, transferred, assigned, delivered, or paid over to the Alien Property Custodian: *Provided further, however,* That except as herein provided no such action by the President shall bar any person from the prosecution of any suit at law or in equity to establish any right, title, or interest which he may have therein.

centum of the interests or voting power in, any such partnership, association, other unincorporated body of individuals, or corporation, was at such time, and is at the time of the return of any money or other property, vested in citizens or subjects of nations, States, or free cities other than Germany, Austria, Hungary, or Austria-Hungary: *Provided, however,* That this subsection shall not affect any rights which any citizen or subject may have under paragraph (1) of this subsection."

Appellant maintains that it was never an enemy or ally of enemy within the statutory definitions; that only property of persons so described was properly subject to seizure; and, as it was neither enemy nor ally of enemy, the provisions of § 9, subsection (a) (always part of the act) in plain terms permit it to recover unlawfully seized property or the proceeds.

On the other side the insistence is that subsection (c) of § 7 permitted seizure of appellant's property because held "on account of, or on behalf of, or for the benefit of" stockholders, the majority of whom were enemy subjects of Germany. Further, that although appellant's property may have been taken originally without authority, return of it is now impliedly prohibited by subsection (b) of § 9, as amended (Acts of 1920 and 1923), since this subsection applies in terms to "all money or other property conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian or seized by him hereunder and held by him or by the Treasurer of the United States," whether taken lawfully or no. Paragraphs 6 and 11 are specially relied upon, and it is said that they specify the only classes of corporations now permitted to recover and do not include appellant.

We think subsection (a) of § 9 gives now, as the same words gave from the first, the right of recovery to any person never "an enemy or ally of enemy," within the statutory definitions. *Stoeck v. Wallace, supra.* The

contrary view, urged by appellees, would greatly qualify, perhaps delete, this subsection, and would place the United States in the unenviable position of positively refusing, after hostilities had ended, to give up property which had been taken contrary to their own laws. It would require very clear words to convince us that Congress intended any such thing.

Subsection (b) adds to those allowed to recover from the first a considerable number always within the definition of "enemy" and affords to them the measure of relief which Congress deemed proper long after peace had been actually restored. And this accords with the spirit of the provision in § 12—"After the end of the war any claim of any enemy or of an ally of enemy to any money or other property received and held by the Alien Property Custodian or deposited in the United States Treasury, shall be settled as Congress shall direct."

Before its passage the original Trading with the Enemy Act was considered in the light of difficulties certain to follow disregard of corporate identity and efforts to fix the status of corporations as enemy or not according to the nationality of stockholders. These had been plainly indicated by the diverse opinions in *Daimler Co. v. Continental Tyre & Rubber Co.*, 2 A. C. [1916] 307, decided June 30, 1916.

Section 7, subsection (c), was never intended, we think, to empower the President to seize corporate property merely because of enemy stockholders' interests therein. Corporations are brought within the carefully framed definitions (§ 2) of "enemy" and "ally of enemy" by the words—"Any corporation incorporated within such territory of any nation with which the United States is at war [or any nation which is an ally of such nation] or incorporated within any country other than the United States and doing business within such territory." And

we find no adequate support for the suggestion that Congress authorized the taking of property of other corporations because one or more stockholders were enemies. Logically carried out this view would have permitted the seizure of all property of companies incorporated by any associated power, e. g., Great Britain, solely because some German held one share of the many thousand. The result indicates that the premise is bad. What the President might do was plainly set down in well considered words.

The challenged decree must be reversed and the cause will be remanded to the Supreme Court of the District of Columbia for further proceedings in conformity with this opinion.

Reversed.